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OFFICIAL REPORT

—OF THE—

DEBATES AND PROCEEDINGS

—IN THE—

NEBRASKA CONSTITUTIONAL CONVENTION

Assembled in Lincoln, June Thirteenth, 1871

From the original shorthand notes of John T. Bell, John Hall, Dan Brown, and John Gray. Prepared for printer (1871) by Guy A. Brown, Clerk of the Supreme Court of Nebraska.

Revised, edited and indexed for publication (1905) by

ADDISON E. SHELDON,

Director of Field Work, Nebraska State Historical Society.

Published by the Nebraska State Historical Society, pursuant to resolution of the Twenty-ninth Session of the Nebraska Legislature.

Volume Eleven, Nebraska State Historical Society Publications
(Series II—Vol. VI.)

T. E. Sedgwick, York, Nebraska

STRICKLAND

Silas A. Strickland.

President Nebraska Constitutional Convention of 1871.

Born 1831, Rochester, New York; died 1878, Omaha, Nebraska. Settled at Bellevue, Nebraska, Oct. 18, 1854. Member of territorial legislature and speaker of the house. Private, lieutenant, and adjutant of First Nebraska volunteers. Lieutenant colonel and colonel of the Fiftieth Ohio infantry; brevet brigadier general. U. S. district attorney. Commander Nebraska Grand Army of the Republic.

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To the

Hon. Addison E. Cady, of St. Paul, Senator from the Seventeenth District,

AND

Hon. N. D. Jackson, of Neligh, Representative from the Fourteenth District,

Whose disinterested and able efforts made possible their publication,

These volumes of the debates of the Constitutional Convention of 1871, are dedicated.

NEBRASKA STATE HISTORICAL SOCIETY

EXECUTIVE BOARD

ELECTED MEMBERS

President —Hon. Henry T. Clarke	Omaha
1st V-Pres.—Robert Harvey	St. Paul
2d V-Pres.—Prof. Geo. E. Howard	Lincoln
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A. E. Sheldon	Director of Field Work
E. E. Blackman	Archeologist
Daisy M. Palin	Newspaper Clerk

STATED MEETINGS

Annual meeting of the Society, second Tuesday in January. Meetings of Executive Board, first Tuesday after second Monday in January, April, July, October.

PREFACE.

This volume is the first of a series designed to give to the public the complete history and original records, so far as they exist, of the Constitutional Conventions of Nebraska.

The idea of their publication in their present form arose in the mind of the editor in 1899, when he found in one of the vaults of the State House the original shorthand report of the convention of 1871. A few hours reading in the manuscript was enough to convince that one of the most important sources of Nebraska political and constitutional history was sleeping there under thirty years' dust in forgotten rest. The discovery of this material and its importance led to a prolonged and thorough search for the lost minutes of the convention of 1875. The story of those minutes, as told by Mr. H. H. Wheeler, formerly of the Supreme Court office, is as follows:

"In the fall of 1889, some days after the death of Guy A. Brown, Clerk of the Nebraska Supreme Court, (which occurred Oct. 27th of that year), I went into the basement vault of the Clerk of the Supreme Court in the state capitol to get some articles belonging to me. On the stairway I met David C. Crawford, one of the state house janitors, with a Swedish helper named Henry, conveying a cracker box with a lot of papers in it upstairs. I instantly recognized the papers as the manuscript report of the debates in the constitutional convention of 1875. I told the janitors that they were very valuable papers and ought to be preserved. When I came up from the vaults a few minutes later I stepped into the office of the Secretary of State, and told Nelson McDowell, Chief Clerk, and O. C. Bell, Deputy Secretary of State, what I had seen; called their attention to the value of the papers, and that they properly belonged in the custody of the Secretary of State. I have never seen the debates since, although I have made diligent personal search for them in the state house, having an important law suit involving a constitutional question which the debates would have shed light upon. I have never found any one who has seen those manuscripts since that day.

"I remember perfectly the form of the manuscript. It was written with lead pencil on sheets of soft newspaper, cut into note head size, and each day's proceedings tied up separately. The manuscript had been kept many years in that cracker box—at first in the Secretary of State's office. Later it was kept in the office of the Clerk of the Supreme Court, because there was more table room there for persons who desired to consult it. I entered the Clerk's office in 1876, the year after the convention, and remember many lawyers getting the manuscript to consult. I remember in particular Mrs. Clara B. Colby using the manuscript many times to familiarize herself with the work of the convention of 1875."

A long and painstaking search by myself through all the vaults and rooms of the state house was finally rewarded in 1900 by finding several rolls of original manuscripts of the convention of 1875 in one of the basement rooms. These manuscripts were chiefly original committee reports upon different parts of the constitution,—in some cases both minority and majority reports being submitted,—and a few minutes of convention work. These were made the subject of a special article by me in the Omaha Daily Bee of February 24, 1901, and are now a part of the archives of the State Historical Society.

Upon coming into charge of the field work of the Historical Society, in April, 1901, correspondence and search was begun for all documents, recollections, letters and newspaper accounts giving original information respecting the constitutional conventions of Nebraska. The program of the State Historical Society meeting January 12-13, 1903, was upon the subject, and many interesting reminiscences of the conventions of 1871 and 1875 were there related. Among other material gathered in the last four years is that found in Gov. Furnas' voluminous scrap books which have been given to the Historical Society, abstracts of newspaper reports of the convention of 1875 as they appeared in the Omaha and Lincoln dailies of that time and, during the summer of 1905, all the letters and manuscripts of the late Judge Samuel Maxwell, of Fremont, who was a member of the convention of 1871 and also that of 1875.

The story of how the manuscripts of the 1871 convention were obtained for these volumes, and how—most important of all—the money for their publication was obtained, has had all the excitement of a drama in real life for the writer. It may be of interest to the public now, and to that vaster public yet to be born and live upon these prairies through all the centuries that are to come. A written application was made to Secretary of State Marsh in December, 1904, for use of the 1871 manuscript to edit and prepare for publication. The matter went over and was laid upon the desk of incoming Secretary of State Galusha, in January, 1905. The Secretary was entirely willing that the manuscripts should be used, but encountered a direct prohibition in the statute which forbade him to "permit any original rolls, papers, or public documents filed in his office to be taken out of it unless called for by resolution of either or both houses of the legislature, or for examination by the executive." Upon consultation with the Attorney General Norris Brown, a preamble and resolution was drawn up by the writer, approved by the Attorney General, given to Representative N. D. Jackson of Antelope county, by him introduced in the House February 6th, and passed unanimously. The resolution is as follows:

WHEREAS, the verbatim report of the debates in the Nebraska constitutional convention of 1871, prepared in manuscript (as the legend thereon states) by the Hon. Guy A. Brown for use as printers' copy to publish said debates has lain unused in the vaults of the capitol over thirty years, and

WHEREAS, the constitution framed by that convention was rejected by the voters at the polls and these debates were therefore never published, and

WHEREAS, the Nebraska State Historical Society is now preparing for publication a history of the constitutions of Nebraska giving all the original source material upon the present constitution and those which preceded it, and

WHEREAS, these debates of the convention of 1871 have been carefully examined by the officers of the historical society and found to be of great historic and general interest, covering in discussion the vital points in our present constitution, the verbatim report of whose convention is lost, and it is highly desirable to have them properly edited, indexed and published so as to make them available to all the people of the state, therefore, be it

Resolved, by this house that the secretary of state is hereby authorized and called upon to deliver to the proper officer of the Nebraska State Historical Society said manuscript printers' copy of the debates of the convention of 1871 for publication under the auspices of said society, taking his receipt therefor.

Armed with a certified copy of this resolution from the Chief Clerk of the House the manuscripts were secured from the Secretary of State, transferred to the Historical Society rooms that very day, and work begun revising them for publication.

The hardest part of the task remained to be accomplished—to secure from the legislature, confronted with a large state debt, and clamorously besieged for appropriations in behalf of state institutions and new buildings, the money that was absolutely required to give these dusty manuscripts to a reading public. By special arrangement Prof. Howard W. Caldwell and the writer had a brief hearing before the House Committee on Finance, Ways and Means, February 14th. The full committee was not present, the session was hurried, the members were tired, and no action was taken upon the request. The general appropriation bill was framed and reported and passed the house with no item for the printing of these debates.

The senate was the last chance. How to secure from hurried, crowded senators the attention needed to convince them of the real, practical as well as scientific, value of these early Nebraska records,—that was the problem. Its solution was attempted by the following brief, which was framed and sent to every member of the senate with a personal letter:

BRIEF FOR A SPECIAL ITEM OF $2,500 TO PUBLISH DEBATES OF NEBRASKA CONSTITUTIONAL CONVENTION OF 1871.

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1. Nebraska has had four constitutional conventions—1864, 1866, 1871, 1875. The first one adjourned without framing a constitution. The second framed our first constitution. The third sat 47 days and framed a document which was defeated at the polls The fourth made our present organic law, between May 12 and June 12.

2. The minutes of the 1875 convention are lost. We have only the journal, the memories of members, newspaper accounts and letters from which to reconstruct its proceedings.

3. The minutes of 1871 are complete—every word spoken in the convention. The same topics were discussed in 1871 as in 1875 and the constitution defeated in 1871 is the real model upon whose lines the present constitution is built. The record of 1871 is, therefore, the most valuable existing commentary on our present document.

4. The following is the list of members of the convention of 1871: (List here omitted).

5. The debates are vigorous, comprehensive and stirring. The vital questions argued today in our courts and public forums were debated in the convention by the early founders of this commonwealth, many of whom have since been leaders in its affairs.

6. The minutes of 1871 will make two volumes of 600 pages each in brevier type. A third volume of about equal size will contain all the original matter attainable in relation to the conventions of 1864, 1866 and 1875.

7. The cost of printing per page will be between $1.25 and $2.00, depending upon the size of the edition.

8. The Historical Society cannot print these volumes without a special allowance. It is required by the act which makes it a state institution (Wheeler, Chap. 84a; Cobbey, paragraph 11,375) to publish its transactions and the historical addresses delivered at its annual meetings.[1] Its regular biennial appropriation of $10,000 for current expenses will not take care of this special item after ordinary expenses are paid.

9. These Constitutional Convention volumes should be printed NOW—to quote the words of Senator Manderson in a recent letter endorsing the plan—"while there are members yet living who can read proofs and offer correction and comment."

Then began a campaign to awaken members of the Senate finance committee to a realization of the importance of the little item. Letters were written to all the members of the 1871 and 1875 conventions, enclosing a copy of the brief, and asking them, who knew better than any other persons the value and interest of the proposed volumes, to write to their own senator and also to the chairman of the senate finance committee. Besides this, similar letters were sent to members of the State Historical Society, to prominent lawyers and to personal friends of the writer over the state. First and last, over a thousand letters were written. The response was generous, and I have since wondered whether Senator Good, Chairman of that committee, thought a conspiracy had been organized against his peace of mind to secure that sum of $2,500. At this critical juncture the personal interest of Senator A. E. Cady, of Howard County, was secured for the item after a thorough explanation and understanding of its merits. March 23d the senate finance committee agreed to add the following amendment to the general appropriation bill:

"For printing special volumes of series two, containing minutes and original sources of Nebraska Constitutional Conventions of 1871, 1875, 1866 and 1864, and other original material, for the biennium, two thousand five hundred dollars."

On March 28th, the general appropriation bill passed the senate with this amendment, and was sent back to the house.

The scene of battle now shifted to the house of representatives and on March 29th the following letter, with a printed copy of the brief before mentioned, was sent to every member of the house, accompanied in some cases by a personal note.

"Hon ....

Dear Sir:—This calls your attention to an amendment made by the senate to H. R. 347,—adding a special item of $2,500 for publishing the debates and records of Nebraska Constitutional Conventions.

The enclosed printed slip summarizes some of the reasons why this special item is placed in the bill. To this there may be added the following points:

(a) Timeliness This is a period of agitation in Nebraska for new constitutions and the constitutional amendments. These strong debates on constitutional structure by Nebraska's leading lawyers and statesmen will be read with interest and profit by all interested in our present and future constitutions.

(b) Subjects discussed. Among the leading subjects debated in these documents are,—Revenue, Corporation Control and Liability, Municipal Institutions, School Systems, Exemptions, Suffrage, Etc.

(c) Origin of the Item. The debates of 1871, as prepared by Guy A. Brown, have lain a third of a century in the state house vaults. Some time ago they were dug up by the undersigned, and found to contain most valuable matter. With the co-operation of the Secretary of State and the Attorney General's office, a resolution was drawn up and introduced in the house by Representative N. D. Jackson, of Antelope, delivering them to the Historical Society to be edited and published.

(d) Endorsement. The leading judicial and legislative officers of the state, past and present, have unanimously commended and endorsed the proposed publication,—so far as interrogated on the question.

(e) Cost. The estimate of $2500 is as low as can be safely made. The three volumes will contain from 1500 to 1800 pages of brevier type—the same as that used in the State Agricultural Society

Report. The last Historical Society report was let at $1.65 per page, 2,000 copies. The demand for our reports is constantly growing, and for these special volumes will without doubt call for a larger edition.

Your interest in the above item is asked, and your vote to retain the same. I know we shall not need to ask your interest in the volumes when they are published."

March 30th was the last legislative day of the session. The house refused to concur in the senate amendments to the general appropriation bill and conference committees were appointed. Lieutenant Governor McGilton appointed Senators Good, Cady, Bresee, Haller and Gould on the part of the senate. Speaker Rouse named Representatives Douglas, Kaley, Davis, Burns and McLeod for the house. In the conference room some effort was made to strike out the item for constitutional convention publication. The instantaneous and strong support of Senator Cady at this vital moment saved the item and the bill came out of conference with the senate amendment intact. A few minutes later the unanimous report of the conference committee was approved in both houses. The fight for the publication of Nebraska's constitutional archives was won.

A few words as to the condition of the manuscript of 1871. It was written in lead pencil, in several different handwritings, on sheets of white newspaper about seven inches by ten and one-half inches in size, with frequent annotations in shorthand upon the back of the sheets, generally indicating where one reporter relieved another. Each days' proceedings was wrapped in a paper cover and indorsed to show its date. The whole was inclosed in six heavy card board file cases marked on the outside, "Minutes of Constitutional Convention of 1871." A slip of paper in Guy A. Brown's handwriting upon the first days' proceedings stated that it was prepared for the printer by him. I am convinced, however, that he never read it through. His characteristic handwriting is absent from the subsequent pages. Where corrections had been made they were in the hand of one or other of the reporters.

In my own editing of the manuscript for publication I have made such changes only as seemed clearly warranted to render the plain sense coherent and inteligible. This has required many alterations of punctuation and capitalization,—breaking up into separate clauses and sentences what the fast-flying shorthand of thirty years ago had run together in hopeless wreck of syntax. Where the reporter had clearly written the wrong word the correct one has been added enclosed in square brackets. [ ] In one or two places the manuscript report ot a member's speech had been given him for correction by the reporter and was not returned. A notable and much regretted instance is the absence of one of Judge O. P. Mason's speeches on corporations. Every known effort has been made to supply all omissions and to correct all errors of the text. At the suggestion of Gen. Chas. F. Manderson proofs have been sent to all living members of the convention, so far as they could be reached, and it is expected to gather their corrections and recollections into notes at the end.

It has been a glad task for me—to rescue these early records of Nebraska from mice and moth and accident and fire and give them fit place in the growing literature of those pioneer days whose human charm and interest grows through each decade by what Lowell calls the "simple magic of dividing time." To know the ideas of human liberty and civic institutions which were held upon these prairies in the days of their first settlement, which fought for recognition in the frame-work of government—that will be worth something to future generations,—is worth something today. It is more than that to me. It is to hear from these printed pages the voices of pioneer Nebraska orators, thinkers and statesmen,—familiar to my childhood's ear,—speaking in the old phrases:—to see once more the flash of the eye and the characteristic gesture accompany a favorite utterance as the combat in convention grows warm and sometimes personal. Many of those voices are now forever stilled. Soon all will be. The memory of the work they wrought, of the hardships and dangers they endured. will be an inspiration to all children of men who shall hereafter enjoy the fruit of the institutions and the spirit they planted upon these plains. In the hope and belief that these records will help make vivid and real the deeds of early days for future men and women they are given to the public. May sons and daughters of

Nebraska feel as they read these pages in years to come the full force of the stanza from In Memoriam:

> "So word by word and line by line,
> "The dead man touched me from the past,—
> "And all at once it seemed at last
> "The living soul was flashed on mine."

HISTORICAL SOCIETY ROOMS,
January 12, 1906.

ADDISON E. SHELDON.

NEBRASKA CONSTITUTIONAL CONVENTION OF 1871.

FIRST DAY.

Agreeable to the provisions of "an Act to provide for calling a Convention to Revise, Alter or Amend the Constitution of the State of Nebraska," approved March 27, 1871, the delegates elect thereto, assembled in the Hall of the House of Representatives, in the city of Lincoln, at 2 o'clock p. m. on the 13th day of June 1871, and were called to order by Mr. S. M. Kirkpatrick of Cass upon whose motion Mr. McCann, of Otoe, was chosen President pro tem.

On motion L. E. Cropsey, of Lancaster, was chosen Chief Secretary and H. M. Judson of Douglas, Assistant Secretary pro tem.

On motion the law providing for the calling of the convention was read by the Secretary, as follows:

An Act to provide for calling a Convention to revise, alter or amend the Constitution of the State of Nebraska.

Be it enacted by the Legislature of the State of Nebraska:

Sec. 1. That a Convention to revise, alter or amend the Constitution of the State of Nebraska, is hereby called to meet at the State House, in the city of Lincoln, on the second Tuesday in the month of June, 1871; said Convention shall consist of fifty-two members, who shall be chosen in the districts entitled to elect members of the House of Representatives and Senate, and each Representative and Senatorial district, as constituted by law, at the time of holding the election for members of said Convention, shall be entitled to elect as many members of said Convention as said district may be entitled to elect members of the House of Representatives and Senate.

Sec. 2. The members of said Convention shall be chosen in the same manner, at the places fixed for holding general elections, and by the electors qualified to vote for members of the House of Representatives and Senate.

Sec. 3. The election of members of said Convention shall be held on the first Tuesday in the month of May, 1871: and such election shall be conducted in conformity to the laws in force respecting elections; and the Clerks or other officers whose duty it shall be to give notice of election for members of the House of Representatives and Senate, shall give notice in the same manner of the election for members of said Convention.

Sec. 4. The several judges shall return the votes given at said election, and the votes shall be canvassed in the same manner as shall then be provided by law for the canvass and return of votes in elections for members of the House of Representatives and Senate, and certificates of election shall be given to persons entitled thereto, by the same officers and in the same manner as members of the House of Representatives and Senate, shall be entitled to receive the same; and in case of contested elections to the Convention, the contesting candidates shall pursue the same course and be governed by the same rules as shall then be provided by law in contested elections for members of the House of Representatives and Senate.

Sec. 5. The members chosen to said Convention shall meet in the hall of the House of Representatives on the day before mentioned, at the hour of 2 o'clock P. M., and before entering upon their duties as members of said Convention, shall each take an oath to support the Constitution of the United States, and to faithfully discharge his duty as a member of said Convention; said Convention shall be the judge of the election, and qualification of its own members; and the members shall be entitled to the same privileges to which members of the Legislature are entitled.

Sec. 6. The members of said Convention shall elect one of their number President, and may elect one or more Secretaries, and such other officers and employees as the business of the Convention may require; the members of the Convention and their Secretaries shall be entitled to receive as compensation for their services three dollars per day, and the same mileage as may be allowed by law to members and clerks of the House of Representatives and Senate; the subordinate officers and employees shall receive such compensation as the Convention shall by resolution direct.

Sec. 7. The amount due each person shall be certified by the President of the Convention to the Auditor of State, who shall issue warrants upon the Treasurer of the State, and the same shall be paid by the Treasurer as other warrants are paid.

Sec. 8. It shall be the duty of the Secretary of State to attend said Convention at the opening thereof; and he and all other public officers shall furnish said Convention with all such statements, books, papers and public documents in their possession, or pertaining to their office, as the Convention may order or require; and it shall be the duty of the Secretary of State to furnish the members with such stationery as is usual for the Legislature while in session, and to cause such printing to be done as the Convention may require.

Sec. 9. The amendments, alterations or revisions of the Constitution agreed to, together with the journal of said Convention, shall be filed in the office of the Secretary of State. The amendments, alterations or revisions of the Constitution shall be published in such manner and in such quantity as shall be ordered by the Convention.

Sec. 10. The amendments, alterations or revisions of the constitution shall be submitted to the people for their adoption or rejection, at an election to be called by said convention, and every person entitled to vote by the laws in force at the time such election is held, may vote on the adoption or rejection of said amendments, alterations or revisions of the constitution, and said amendments, alterations or revisions of the constitution shall not take effect unless adopted by a majority of the electors voting at such election.

Sec. 11 The amendments, alterations or revisions shall be so prepared and distinguished by numbers or otherwise, that they can be voted upon separately, unless the convention shall deem the same unnecessary or impracticable. The convention shall prescribe the form or manner of voting, the publication of the amendments, alterations or revisions, the notice of elections, and such other matters as in their judgment the best interests of the State may demand.

Sec. 12. At the election required by section 10 of this act, the judges of election shall receive the votes in the form to be prescribed by said Convention, and the laws of this State then in force relating to general elections, shall apply to the voting upon said amendments, alterations or revisions, so far as the same can be made applicable thereto; and the votes shall be canvassed, and all proceedings shall be had in regard to them, as nearly as practicable, in the manner prescribed by law then in force, in respect to elections for State officers, provided that said convention may prescribe any other manner of canvassing the votes given at said election, and provide the way and manner of the amendments, alterations or revisions of the constitution taking effect after its adoption by the people.

Sec. 13. Any newspaper in this State, which shall give this act one insertion before the tenth day of April, 1871, shall, upon forwarding to the Secretary of State a copy containing such publication, be entitled to receive pay for the same, at the same rate as allowed by contract for publishing the laws of the State, which sum shall be certified to the Auditor, who shall draw a warrant upon the Treasurer for that amount.

Sec. 14. That the sum of fifteen thousand dollars, or so much thereof as may be necessary to carry into effect the provisions of this Act, be and the same is hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

G. W. COLLINS,
Speaker of the House of Representatives.

E. E. CUNNINGHAM,
President of the Senate.

Approved March 27, A. D. 1871.

WILLIAM H. JAMES,
Acting Governor.

I hereby certify that this bill originated in and passed the House of Representatives.

L. E. CROPSEY,
Ass't Clerk House of Representatives.

On motion the chair appointed the following Committee on Credentials:

J. C. Myers, of Douglas.
J. E. Philpott, of Lancaster.
S. P. Majors, of Nemaha.
B. S. Newsom, of Otoe.
O. A. Abbott, of Hall.

On motion Convention took a recess of twenty minutes.

After recess, Mr. Myers, Chairman of Committee on Credentials reported that they had examined the credentials of the following persons and found them entitled to seats in this body:

O. A. Abbott, Hall county, 9th Senatorial District.

M. Ballard, Washington county, 17th Representative District.

J. E. Boyd, Douglas county, 5th Senatorial District.

J. C. Campbell, Otoe county, 3rd Senatorial District.

J. N. Cassell, Lancaster county, 8th Representative District.

W. H. Curtis, Pawnee county, 14th Representative District.

J. W. Eaton, Otoe county, 3rd Representative District.

E. Estabrook, Douglas county, 5th Senatorial District.

P. S. Gibbs, Burt county, 18th Representative District.

G. C. Granger, Dakota county, 21st Representative District.

E. N. Grenell, Sarpy county, 15th Representative District.

E. F. Gray, Dodge county, 19th Representative District.

N. K. Griggs, Gage county, 12th Senatorial District.

I. S. Hascall, Douglas county, 16th Representative District.

B. I. Hinman, Lincoln county, 26th Representative District.

J. A. Kenaston, Cass county, 4th Representative District.

Jas. Kilburn, Saunders county, 8th Senatorial District.

S. M. Kirkpatrick, Cass county 4th Representative District.

G. B. Lake, Douglas county, 16th Representative District.

Lewis Ley, Stanton county, 23rd Representative District.

Waldo Lyon, Burt county, 6th Senatorial District.

D. J. McCann, Otoe county, 3rd Senatorial District.

S. P. Majors, Nemaha county, 2nd Representative District.

O. P. Mason, Otoe county, 3rd Representative District.

C. F. Manderson, Douglas county, 25th Representative District.

Samuel Maxwell, Cass county, 4th Representative District.

D. T. Moore, York county, 13th Representative District.

J. C. Myers, Douglas county, 16th Representative District.

J. D. Neligh, Cuming county, 20th Senatorial District.

B. S. Newsom, Otoe county, 3rd Representative District.

W. Parchen, Richardson county, 1st Representative District.

H. W. Parker, Seward county, 10th Representative District.

J. E. Philpott, Lancaster county, 11th Senatorial District.

B. Price, Jefferson county, 12th Representative District.

H. M. Reynolds, Gage county, 7th Representative District.

Seth Robinson, Lancaster county, 8th Representative District.

J. B. Scofield, Otoe county, 3rd Representative District.

Jacob Shaff, Saunders county, 9th Representative District.

A. L. Sprague, Saunders county, 9th Representative District.

R. F. Stevenson, Cuming county, 7th Senatorial District.

C. A. Speice, Platte county, 22nd Representative District.

A. S. Stewart, Pawnee county, 5th Representative District.

S. A. Strickland, Douglas county, 16th Representative District.

Geo. H. Thummel, Hall and Merrick counties, 24th Representative District.

E. W. Thomas, Nemaha county, 4th Senatorial District.

F. A. Tisdel, Nemaha county, 2nd Representative District.

E. S. Towle, Richardson county, 1st Senatorial District.

Victor Vifquain, Saline county, 11th Representative District.

E. Wakeley, Douglas county, 16th Representative District.

A. J. Weaver, Richardson county, 1st Representative District.

John Wilson, Johnson county, 6th Representative District.

J. M. Woolworth, Douglas county, 16th Representative District.

On motion the report was accepted and the Committee discharged.

On motion of Mr. Estabrook, Chief Justice Mason administered the oath of office to all other members, and the oath was administered to him by Associate Justice Lake.

Mr. Myers moved that the Convention now proceed to elect a permanent President.

Amended by Mr. Maxwell that the election be by ballot.

A motion to adjourn until tomorrow morning was lost.

Mr. Kirkpatrick moved a call of the House which was agreed to.

On a call of the roll those not answering were Messrs. Robinson and Wakeley.

On motion of Mr. Estabrook the rules of the last House of Representatives so far as applicable, were adopted for the temporary government of this body.

On motion Messrs. Parker, Philpott and Towle were appointed tellers by the chair.

The Convention then proceeded to ballot for the permanent president with the following result:

S. A. Strickland, of Douglas	20
D. J. McCann, of Otoe	3
O. P. Mason, of Otoe	13
E. W. Thomas, of Nemaha	7
J. M. Woolworth, of Douglas	1
J. E. Boyd, of Douglas	1
Geo. B. Lake, of Douglas	3
J. C. Myers; of Douglas	2

No election.

A motion to adjourn until to-morrow morning at nine o'clock was lost.

Upon the second ballot the following was the result:

S. A. Strickland,	26
D. J. McCann	1
O. P. Mason	16
E. W. Thomas	5
Geo. B. Lake	1
J. M. Woolworth	1

The PRESIDENT pro tem. Mr. Strickland having received a majority of all votes cast, he is hereby declared duly elected permanent President of this Convention. I appoint Messrs. Lake, Mason and Woolworth a committee to wait upon Mr Strickland, inform him of his election, and conduct him to the chair.

Mr. Strickland was then conducted to the chair by the gentlemen named as the Committee.

The PRESIDENT pro tem. I have the honor to introduce to you Silas A. Strickland, Permanent President of the Convention, (applause).

The PRESIDENT then addressed the Convention as follows:

Address of The President.

GENTLEMEN OF THE CONVENTION, It will be unnecessary for me to say I feel very grateful for this compliment, and indeed, I regard it as a great compliment. I hope to have at the conclusion of our labors, as much of your respect as I have today of your confidence. I shall try to preside with all the fairness and impartiality I can command. When I look about me and see so much of the best ability of the state, I am satisfied I shall be materially helped in the performance of my duties. Again I thank you, gentlemen, for this compliment.

Adjournment.

Mr. MYERS. I move that the Convention adjourn until two o'clock P. M.

The motion was agreed to.

So the Convention (at twelve o'clock) adjourned.

Afternoon Session.

Mr. McCANN. Mr. President I move that a Committee of seven be appointed to prepare Rules for the government of the Convention, Carried.

On motion the Convention proceeded by ballot to elect a Chief Clerk.

The following gentlemen were put in nomination: Guy A. Brown, L. E. Cropsey, L. L. Holbrook, C. M. Blaker.

The first ballot resulted as follows:

Brown	11
Cropsey	20
Holbrook	16
Blaker	3

No election.

The second ballot resulted as follows:

Brown	7
Cropsey	21
Holbrook	22

No choice.

The third ballot resulted as follows:

Cropsey	24
Holbrook	26

The PRESIDENT. Mr. Holbrook having received a majority of all the votes cast is hereby declared duly elected Chief Secretary of this Convention.

On motion of Mr. Hascall the Convention proceeded to the election of an Assistant Secretary.

The following nominations were made: Guy A. Brown, J. G. Miller, L. E. Cropsey, H. M. Judson, W. S. McGowan, and C. M. Blaker.

The first ballot resulted as follows:

Miller	2
Brown	5
Cropsey	19
Judson	7
McGowan	13
Blaker	3

No election.

The second ballot resulted as follows:

Miller	1
Brown	3
Cropsey	24
Judson	5
McGowan	17

No choice.

The third ballot resulted as follows:

Miller	1
Brown	3
McGowan	18
Cropsey	27

The PRESIDENT. Mr. Cropsey having received a majority of all the votes cast, is hereby declared duly elected Assistant Secretary of this Convention.

On motion, C. E. Hine was unanimously elected Doorkeeper.

On motion, the Convention proceeded to the election of a Sergt-at-Arms, the members voting VIVA VOCE.

On the first ballot the result was as follows:

Clark	30
Kline	15
Parker	4

The PRESIDENT. Mr. Clark having received a majority of all the votes cast, is hereby declared duly elected Sergt-at-Arms of this Convention.

Moved that the Convention proceed to the election of a Postmaster. Lost.

On motion the Convention proceeded to the election of two Pages.

A motion to elect a third was lost, and Master W. T. Odell, Thos. Rush, R. W. Patrick and C. Y. Whitesides were put in nomination.

The result of the call was as follows:

Odell	39
Whitesides	34
Rush	25
Patrick	1
Hodges	2

Masters Odell and Whitesides were then declared duly elected.

A motion was adopted requesting the clergymen of the city to make arrangements among themselves to furnish prayers for the Convention

Pending a motion that the President be authorized to appoint a Janitor, the Convention adjourned till 10 o'clock to-morrow.

Mr. MYERS. I move that a Janitor be appointed for this Convention.

Adjournment.

Mr. WOOLWORTH. Mr. President, I move that this Convention now adjourn.

The motion was agreed to.

So the Convention (at five o'clock P. M.) adjourned.

SECOND DAY.

Wednesday, June 14, 1871.

Convention called to order by the President.

Prayer by Rev. Mr. Fifield

Roll call. All members being present but Mr. Robinson.

Judge WAKELEY of Douglas being present, on motion the oath of office was administered to him by Chief Justice Mason. Judge Mason also administered the oath to the officers of the Convention.

Minutes of the preceding day read and approved.

The President announced the following Committee on Rules, viz:

Messrs.
McCann, of Otoe.
Lake, of Douglas.
Thomas, of Nemaha.
Maxwell, of Cass.
Towle, of Richardson.
Abbott, of Hall.
Philpott, of Lancaster.

Mr. McCANN, Chairman of Committee on Rules, announced that the committee was ready to report. The report was thereupon read by the Secretary as follows:

Rules of The Convention.

Number 1. A majority of the Convention shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

No. 2. The Convention shall keep a journal of its proceedings, and publish them. The yeas and nays of the members on any question shall, at the desire of any three of them, be entered on the journal.

No. 3. Any two members of the Convention shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public, or to any individual, and to have the reasons of their dissent, in respectful language, entered on the journal, without debate, whenever the same shall be filed with the Secretary.

No. 4. The Convention may reprimand or censure its members for disorderly behavior, and with the concurrence of two-thirds of all the members elected, expel a member, and the reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

No. 5. The Convention, during its sessions, may punish by imprisonment any person not a member, who shall be guilty of disrespect to the same by any disorderly or contemptuous behavior in its presence; provided, such imprisonment shall not at any one time exceed twenty-four hours.

No. 6. The Door-keeper shall not permit any person not a member of this Convention to pass inside the hall, except Judges of the Federal and Supreme Courts of this State, the Acting Governor, Heads of Departments, members of the Senate and House of Representatives of the United States, officers of the Convention, and reporters of the press duly assigned as such by this Convention.

No. 7. The President shall take the chair every day, at the hour to which the Convention shall have adjourned; shall immediately call the members to order, and on the appearance of a quorum shall cause the journal of the preceding day to be read; and in all cases, in the absence of a quorum, the members present may take such measures as shall be necessary to procure the attendance of absent members, and the Convention may adjourn from day to day until a quorum shall be present.

No. 8. He shall preserve decorum and order; may speak to points of order in preference to other members, rising from his seat for that purpose, and shall decide questions of order, subject to an appeal to the Convention by any one member; on which no member shall speak more than once unless by leave of the Convention.

No. 9. He shall rise to put a question, but may state it sitting.

No.10. Questions shall be distinctly put in this form, viz: "As many as are of the opinion that— (as the case may be) say 'aye,' "and after the affirmative voice is expressed, "As many as are of the contrary opinion say 'no." If the President doubt, or a division be called for, the Convention shall decide; those in the affirmative shall rise from their seats, and afterwards those in the negative.

No. 11. The President shall examine and correct the journal before it is read; he shall have general direction of the hall; he shall have the right to name any member to perform the duties of the chair, but such substitution shall not extend beyond one day, and such substitute shall be vested during such time with all the powers of the President.

No. 12. All Committees shall be appointed by the President, unless otherwise ordered by the Convention.

No. 13. In case of any disturbance or disorderly conduct in the gallery, the President (or Chairman of the Committee of the Whole Convention) shall have power to order the same to be cleared.

No. 14. The President shall assign to the Sergeant-atArms and his assistants their respective duties and stations.

No. 15. Whenever any member is about to speak, or deliver any matter to the Convention, he shall rise from his seat and address himself to "Mr. President," (not moving on the floor) and shall confine himself strictly to the proposition or propositions immediately pending before the Convention.

No. 16. If any member in speaking (or otherwise) transgress the Rules of the Convention, the President shall, or any member may, call him to order; and in which case the member so called to order shall immediatly sit down unless permitted to explain; and the Convention, if appealed to, shall decide on the case, but without debate. If the decision be in favor of the member so called to order, he shall be at liberty to proceed, but not otherwise unless by leave of the Convention.

No. 17. When two or more members happen to rise at once, the President shall name the member who is first to speak.

No. 18. Every member who shall be within the hall of the Convention when a question shall be stated from the chair, shall vote thereon, unless he shall be excused, or be personally interested in the question. No member shall be obliged to vote on any question unless within the hall when the question shall be put; but in the case of a division by yeas and nays, may vote if present before the last name shall be called. Any member desiring to be excused from voting must make his request before the roll shall be commenced. He may then state concisely, without argument, his reasons for asking to be excused, and the question of excuse ing shall be taken without debate.

No. 19. When a motion is made it shall be stated by the President, or being made in writing, shall be handed to the Secretary, and read aloud before debate.

No. 20. Every motion shall be reduced to writing, if the President or any member desire it.

No. 21. When the yeas and nays shall be taken on any question, no member shall be permitted to vote after the decision is announced from the Chair, unless by unanimous consent of the Convention.

No. 22. After a motion is stated by the President, or read by the Secretary, it shall be deemed in the possession of the Convention, and may be withdrawn at any time before decision or amendment.

No. 23. When a question is under debate no motion shall be received but to adjourn, to call the House, to lay on the table, the previous question, to postpone indefinitely, to postpone to a day certain, to commit or to amend; which several motions shall have precedence in the order in which they stand arranged.

No. 24. A motion for adjournment shall always be in order, and be decided, as well as the motion to lay on the table, without debate.

No. 25. No motion to postpone to a day certain, or indefinitely, or to commit, being decided, shall again be allowed on the same day and at the same stage of the proposition.

No. 26. A motion to strike out the proposition shall have precedence of a motion to amend, and if carried shall be deemed equivalent to its rejection.

No. 27. When a blank is to be filled, and different sums and times are proposed, the question shall first be put on the largest sum and longest time.

No. 28. No person shall be permitted to smoke in the Convention chamber, or to give any signs of approbation or disapprobation, either on the floor or in the gallery.

No. 29. It shall be the duty of the Secretary to keep a book, in which he shall record all proceedings of the Convention; and to do and perform all other facts appertaining to his office, as may be required of him by the Convention or its presiding officer.

No. 30. It shall be the duty of the Sergeant-at-Arms to attend the Convention during its sittings, to execute the commands of the Convention, from time to time, together with all such process, issued by authority thereof as shall be directed to him by the President.

No. 31. The Standing Committees of the Convention shall consist of the following:

1.	Judiciary	11
2.	Executive	7
3.	Legislative	7
4.	Electoral and Representative Reform	7
5.	The Right of Suffrage	7
6.	Education, School Funds and Lands	7
7.	Municipal Corporations	7
8.	Railroad Corporations	7
9.	Miscellaneous Corporations	7
10.	Revenue	7
11.	Finance	7
12.	Banks and Currency	7
13.	State,County and Municipal Indebtedness	7
14.	Public Accounts and Expenditures	7
15.	Military Affairs	7
16.	Retrenchment and Reform	7
17.	Counties	7
18.	Township or Precinct Organization	7
19.	State Lands (other than School Lands)	7
20.	Judicial Circuits and Congressional Apportionment	5
21.	Legislative Apportionment	7
22.	Manufactures and Agriculture	7
23.	State Institutions and Public Buildings	7
24.	Penitentiary and Reformatory Institutions	7
25.	Bill of Rights	7
26.	Federal Relations	7
27.	Future Amendments	7
28.	Printing and Binding	3
29.	Roads	7
30.	Internal Improvements	7
31.	Revision and Adjustment	7
32.	Schedule	7
33.	Miscellaneous Subjects	7

No. 32. If the question in debate contains several propositions, any member may have the same divided; and on motion to strike out and insert, it shall be in order to move for a division of the question; and the rejection of a motion to strike out and insert one proposition

shall not prevent a motion to strike out and insert a different proposition nor prevent a subsequent proposition simply to strike out; nor shall the rejection of a motion simply to strike out prevent a subsequent motion to strike out and insert.

No. 33. The unfinished business on which the Convention was engaged at its last adjournment shall, at the next meeting of the Convention of the same day, have precedence of all other business.

No. 34. When a question has been once put, and carried in the affirmative or negative, it shall be in order for a member of the majority to move for a reconsideration thereof; but no motion for the re-consideration of any vote shall be in order after the expiration of two business days. Such motion shall take precedence of all other questions, except a motion to adjourn.

No. 35. When motions are made for reference of the same subject to a Select Committee and to a Standing Committee, the question of reference to a Standing Committee shall be first put.

No. 36. Upon the call of the Convention. the names of delegates shall be called by the Secretary, and the absentees noted, after which the names of such absentees shall again be called over. The doors shall then be closed, and those for whom no excuse or insufficient excuses are made may, by order of those present. (if a quorum), be taken into custody as they appear, or may be sent for and taken into custody, wherever to be found by the Sergeant-at-Arms of the Convention.

No. 37. In forming a Committee of the Whole, the President shall leave the chair, and the Chairman, to preside in Committee, shall be appointed by the President.

No. 38. Upon propositions being committed to Committee of the Whole, they shall be first read throughout by the Secretary, and then again read and debated by clauses, leaving the preamble to be considered last. After report of said committee the proposition shall again be subject to debate or amendment before a question is taken.

No. 39. The rules of parliamentary practice comprised in Cushing's Manual shall govern the Convention in all cases in which they are applicable and not inconsistent with the standing rules and orders of the Convention.

No. 40. A motion to commit, until it is decided, shall preclude all amendments and debate on the main question; and a motion to postpone indefinitely or to a day certain, until it is decided, shall preclude all amendments on the main question.

No. 41. No motion or proposition on a subject different from that under consideration, shall be admitted under color of amendment.

No. 42. No rule of the Convention shall be altered, suspended or rescinded without the vote of two-thirds of the members present.

No. 43. The hours of meeting shall be 10 A. M. and 2 P. M., unless otherwise ordered.

Order of Business.

No. 44.

1. Reading of the Journal.
2. Communications and presentation of petitions.
3. Unfinished business of the previous day.
4. Reports from Standing Committees.
5. Reports from Select Committees.
6. Presentation of resolutions and propositions to amend the Constitution.

No. 45. The previous question shall be always in order, and shall be put in this form: "Shall the main question be now put?" and until it is decided shall preclude all amendments or debate.

No. 46. When, on taking the previous question, the Convention shall decide that the main question shall not be put, the main question shall be considered as still remaining under debate.

No. 47. The effects of the main question being ordered shall put an end to all debate, and bring the Convention to a direct vote—first, upon all amendments reported or pending, being first applied to the amendments last moved, and then on the main question.

No. 48. After the motion for the previous question has prevailed, it shall not be in order to move a call of the Convention prior to a decision of the main question.

No. 49. Every article which it is proposed shall form part of the Constitution, shall be read the first and second times, and be referred to the Committee of the Whole; and after it shall have been considered in Committee of the Whole, and after the amendments reported by the Committee of the Whole, shall have been acted on, it shall be open to amendment, in the Convention; and where there are no further amendments to be proposed, the question shall be on ordering the article to be Engrossed for its third reading; and after the same shall have been Engrossed the same shall not be amended except by the unanimous consent of the Convention. And after the article has been read a third time and passed, it shall be referred to the committee on revision and adjustment, who shall report to the Convention all such verbal amendments as they shall deem expedient not changing in any manner the substance of such article: Provided, however, That this rule shall not be so construed as to prevent a majority of the Convention from taking up the report of the said committee, and making any alterations or amendments thereto.

Mr. HASCALL moved that the report of the Committee be adopted.

Mr. MASON moved to amend by submitting the report to Committee of the Whole. The amendment was agreed to and the motion carried.

Mr. TOWLE offered the following resolution:

RESOLVED, that we now proceed to draw seats in the following manner:

1. Folded ballots to be prepared, each containing the name of a member.
2. The ballots to be examined and compared with the official lists, by a Committee of two, to be appointed for that purpose by the President.
3. The ballots to be placed in a box and thoroughly shaken in the presence of the Committee.
4. The members then to retire from the seats.
5. A person, other than a member or officer, to be designated to draw ballots.
6. Each ballot as drawn to be handed to the Secretary and to be opened by him, who shall announce the name drawn.
7. The person whose name shall be drawn, to select his seat and occupy it till the completion of the drawing.
8. The drawing to be continued in this manner till completed.

Mr. TOWLE moved the adoption of the resolution which was not agreed to.

Mr. WOOLWORTH moved a reconsideration of the vote by which the resolution was lost, which was agreed to.

The question recurring on the passage of the resolution, Mr Boyd moved to amend so that the drawing should be by delegation. The amendment being withdrawn the question was put and the resolution adopted. Chair appointed as a Committee to prepare ballots and superintend the drawing, Messrs. Philpott and Ballard.

In accordance with the provisions of the resolution adopted, the Secretary prepared the names of members which were deposited in a box, and as their names were drawn therefrom by Mr. Hall, one of the reporters, members selected their seats.

Mr. MANDERSON offered a resolution for the appointment of a Committee of three to take into consideration the number of short hand reporters necessary to take the proceedings of the Convention, and the compensation that should be allowed them.

Adopted.

Messrs. Manderson, Neligh and Weaver were appointed such Committee.

On motion of Mr. Stewart the Convention took a recess of five minutes.

After Recess.

The PRESIDENT called the Convention to order.

Rules of The Convention.

Mr. McCANN. I move the Convention resolve itself into Committee of the Whole to consider the Rules for the government of the Convention.

Agreed to NEM CON.

At eleven o'clock and thirty minutes A. M. the Convention resolved itself into a Committee of the Whole with Mr. Campbell in the Chair. After sitting some time, the Committee arose, reported progress, and asked leave to sit again at 2 P. M..

Report adopted.

Afternoon Session.

Wednesday, June 14, 1871.

At 2 o'clock P. M., Convention met and went into Committee of the Whole, Mr. Campbell of Otoe in the Chair, resuming the consideration of the Rules reported for the government of the body.

After some time the Committee arose and Mr. CAMPBELL, Chairman of the Committee of the Whole Convention, reported that the Committee had had under consideration the permanent Rules of the Convention and reported the following amendments:

Rule 6. Amended so as to read. "also members of the present Legislature of Nebraska be allowed the privileges of the floor."

Rule 31. Sec. 1—add "and judicial districts" Sec's 10. and 11. Consolidate "Finance and Revenue". Sec. 19. amended by striking out the words "judicial circuits".

Sec. 6. Add two more members to the Committee. Rule 36. add, "all propositions presented to the Convention relating to the provisions or frame of the Constitution, shall in the first instance be referred to an appropriate standing Committee without debate, except as to the Committee to which the reference shall be made."

Mr. WAKELEY offered the following amendment to Rule 45—add, after the words "in order," "if the motion therefor be seconded by ten members".

Amendment adopted.

Mr. ABBOTT. I move the adoption of the Rules as amended.

Mr. MYERS. I move that 200 copies of the Rules be printed for the use of the Convention, under the superintendence of the Secretary of State.

Agreed to.

Mr. PHILPOTT announced the arrival of his colleague, Mr. Robinson, who appeared, and the oath was administered to him by the Chief Justice.

Mr. THOMAS. Mr. President I wish to ask leave of absence until Monday next, for Mr. Mason.

Leave granted NEM. CON.

Adjournment.

Mr. MYERS. Mr. President I move that the Convention adjourn.

The motion was agreed to.

So the Convention (at six o'clock and thirty minutes) adjourned.

THIRD DAY.

Thursday, June 15, 1871.

The Convention met at ten o'clock A. M. and was called to order by the President.

Prayer was offered by Rev. D. R. Dungan of Lincoln.

The journal of yesterday was read and approved.

Order of Business.

The PRESIDENT. Gentlemen, I shall follow the order of business contained in the Rules adopted on yesterday.

Under the order of unfinished business of the previous day.

Appointment of Janitor.

Mr. MYERS. Mr. President, under that head, I will call up the motion for the appointment of a janitor for the care of this hall during the session.

The PRESIDENT. Gentlemen, it has been moved and seconded that a janitor be appointed for the care of this hall during the sessions of this Convention. Those in favor of the motion will say "aye". Opposed, "no". Carried.

Postage.

Mr. MOORE. Mr. President I move that the Secretary of State be requested to furnish the members of the Constitutional Convention with the necessary amount of postage stamps.

The PRESIDENT. The gentlemen will frank their letters and stamps will be put upon them by the postmaster.

Mr. McCANN. I understand our yesterday's mail is delayed in consequence of no arrangement being perfected.

Mr. PARCHEN. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the sum of one hundred dollars, or so much thereof as may be necessary, shall be set aside out of the funds of the Convention.

The PRESIDENT. Is the motion of the gentleman from York seconded? (yes, yes).

Mr. McCANN. I hope a different plan will be adopted. We do not wish postage stamps here, lying around loose. I suggest that members frank their mail matter and the postmaster stamp the same and charge to the Convention. We then obtain the exact amount of postage required. I think the postmaster will prefer this course.

Mr. HASCALL. I would say, that was the plan adopted by the last Legislature and I was informed by the postmaster that he got out all his clerks and all the cheap boys that could be found, yet they were not sufficient to put on the necessary stamps.

Mr. KIRKPATRICK. Would it not be better for each gentleman to furnish his own postage. I am willing to do so.

Mr. WILSON. It seems to me, it would delay the mail if letters are to be stamped by the postmaster. Let the members have postage stamps and return what they have left.

Mr. ESTABROOK. Does any one know that the postmaster would furnish stamps for such pay as we expect to give here, and is it known we can procure stamps by a resolution? I move that the resolution be referred to a committee of three.

The motion was agreed to.

The PRESIDENT. The Committee will consist of Messrs. Estabrook, Moore and Parchen.

Newspapers.

Mr. CASSELL. I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Secretary be instructed to provide 300 copies of the Daily State Journal for the use of the Convention during the session.

Mr. TOWLE. I offer the following resolution as an amendment.

The Secretary read the resolution as follows:

RESOLVED. That each member of this Convention be allowed to subscribe for seven newspapers (Daily) containing the reports of the proceedings of this Convention, and that so much of the funds of this Convention as may be necessary be, and are hereby, appropriated for such purpose.

Mr. HASCALL. I move to amend by saying three instead of "seven" copies.

Mr. ESTABROOK. It seems to me that the resolutions, some of them should cover the entire newspaper question. We ought to consider the propriety of taking all papers it is necessary should be taken. My own view is that each member be allowed to take one copy of each paper, daily and weekly; not for the purpose of enlightening their constituents, but to learn what their constituents have to say to them. It has been the rule of all parliamentary bodies to send papers abroad, to let their constituents know what the members were doing, but I do not think that is necessary here. We need the advice and instruction of our constituents, and for that purpose I favor the plan of taking one number each of every paper published in the State. I do not think we need any more copies of the **Journal**, than of any other paper.

Mr. NEWSOM. I think it would be unfair to impose upon me such a paper as I would not prefer. I am in favor of the amendment.

Mr. WILSON. I have no objection to the suggestion of the gentleman from Douglas, but in taking the papers abroad throughout the State we ought to know if they are prepared to publish the action of this Convention. I would favor the first resolution for 300 copies of the **Journal**.

The PRESIDENT. Gentlemen, the question is on the amendment to the amendment, by the gentleman from Douglas, Mr. Hascall.

The amendment was not agreed to.

The PRESIDENT. The question now is upon the amendment of the gentleman from Richardson (Mr. Towle).

The amendment was agreed to.

The PRESIDENT. The question

now is upon the original resolution as amended.

The resolution was agreed to.

Newspaper Reporters.

Mr. MYERS. I move that the President of this Convention be requested to assign the several reporters present, seats upon the floor of the House.

The motion was agreed to.

Printing.

Mr. THOMAS. I offer the following resolution.

RESOLVED. That the Secretary of State be required to communicate to this Convention as soon as possible a statement showing the entire cost to the State of printing and binding, and also the contract price for which the same has been let for each year since the admission of Nebraska as a State.

Mr. MASON. I do not rise to offer an amendment but to add an inquiry as to the arrangement for the printing for this Convention, which more immediately concerns us, whether it has been awarded to the lowest bidder, or whether it is let to some chosen favorite. I want it put in the market; that it be under the control of this Convention, and the contracts awarded to the lowest bidder. I hope the gentleman will amend his resolution so as to require the Secretary to inform the members what arrangement has been made, and upon what terms, to procure the printing of the proceedings of this Convention. We have no power to remedy the past. We may, perhaps, avoid the commission of errors in the present, and set an example to avoid them in the future.

Mr. McCANN. What printing has already been done, has been done in accordance with the act.

Mr. KIRKPATRICK. It strikes me that the act of the Legislature providing for this Convention makes it the duty of the Secretary to procure printing. This thing of letting it out to public and general competition may work some trouble. It is plain to me that the incidental printing ought to be done here. I am as much in favor of economy as anybody.

Mr. THOMAS. I will state that the object I had in view in introducing that resolution was that the question of public printing might come before the Convention in order to show how this thing has been done; and see whether it is advisable to follow the same course or whether we shall adopt some mode of our own. I agree with the gentleman that some plan be adopted with regard to the printing for this Convention, but that should be a separate question. The Printing Committee should first report.

Mr. MASON. I see now it may be necessary to adopt the resolution of the gentleman from Nemaha, (Mr. Thomas) for the reason that if I recollect correctly, there is a State contract existing.

Mr. ESTABROOK. That is precisely my idea but I am not certain however that the letting covers the printing for this Convention. I see the law provides that the Secretary shall cause such printing to be done as the Convention may require. That however may not be incompatible with the provisions of the law requiring that the State printing be let to the lowest bidder.

The PRESIDENT. The question is upon the adoption of the resolution of the gentleman from Nemaha (Mr. Thomas).

The resolution was agreed to.

Mr. PHILPOTT. I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Secretary of State be directed by this Convention to immediately advertise for five days to receive bids for the price for which parties bidding will do the necessary printing for the Convention, and that he should be instructed to award the printing to the lowest bidder, and that the same be awarded to a Nebraska printer.

Mr. PHILPOTT. The printing contract alluded to by the gentleman from Otoe (Mr. Mason) refers only to the printing for the Legislature, and not for this Convention.

Mr. ESTABROOK. Then there is something defective about it, if it does not provide for the printing of this Convention.

Mr. ABBOTT. That the Committee on printing and binding will decide.

Mr. CASSELL. I move the resolution be referred to a committee of three.

Mr. McCANN. We have already a committee of three on printing and binding.

Mr. ESTABROOK. I do not understand that the duties of that committee pertain to the transactions of this body, but they do to the articles in the Constitution.

Mr. McCANN. I take it that the committee will no doubt consist of three professional printers if there be that number in this body. I object to the appointment of two or three committees on the same subject.

The PRESIDENT. The question is upon the motion of the gentleman from Lancaster, (Mr. Cassell), to refer the resolution of his colleague (Mr. Philpott), to a committee of three.

The motion agreed to.

Official Reporters.

Mr. MANDERSON. Mr. President, It is out of the order but I ask leave to submit the report of the Committee to whom was referred the matter of reporting the proceedings of the Convention. ("Leave")

Your Committee to whom was referred the matter of reporting the proceedings of the Convention respectfully report:

1st. The only short hand reporters to their knowledge, within the state are John T. Bell, John Hall, Dan Brown and John Gray, who form a business partnership under the name of "Bell & Co."

2nd. These gentlemen are competent, responsible and well fitted for the work.

3rd. They agree to give their united services in reporting and transcribing the proceedings during the Convention, and have the copy ready for the printer, as speedily as required by him.

4th. They demand for this service $30.00 a day during the session of the Convention.

5th. This is as cheaply as the work can be done, and the compensation is below the usual rates paid.

Your Committee therefore recommend that Messrs. Bell & Co., be employed at the rate of compensation asked, for the purpose named.

CHAS. F. MANDERSON.
A. J. WEAVER.
JOHN D. NELIGH.

Mr. ESTABROOK. I move the report be adopted.

The motion agreed to.

Mr. CAMPBELL. I now move Bell & Co. be elected Reporters of the Convention.

Mr. MANDERSON. I move to amend the resolution by adding "At a compensation of $30.00 *per day*."

The motion as amended was agreed to NEM. CON.

Mr. NELIGH. I move that the Chief Justice administer the oath to the Reporters.

Motion agreed to NEM. CON.

The Chief Justice administered the oath to the Reporters as follows:

You and each of you do solemnly swear to support the Constitution of the United States; and to faithfully and truly report the proceedings of this Convention according to the best of your skill and ability, and this you do in the presence of God.

Leave of Absence.

Mr. WOOLWORTH. I ask leave of absence until Monday.

Leave granted NEM. CON.

Mr. MAXWELL. Mr. President I desire leave of absence until Monday noon.

Leave granted NEM. CON.

Mr. ABBOTT. Mr. President, I ask leave of absence for Mr. Thummel (of Hall).

Leave granted NEM. CON.

Adjournment.

Mr. WILSON. I move to adjourn until Monday at 2 o'clock.

Mr. PARKER. I move to amend that after the announcement of the Committees, we adjourn until Monday at 2 o'clock.

The PRESIDENT. I attempted to arrange the Committees and found it would require 244 names to fill all the committees. It is a difficult task to assign each gentleman to a proper and appropriate place. I do not wish to do it hurriedly.

While I do not ask any time and am willing to make any personal sacrifice to accomplish the arrangement *of the Committees, I will accept such* time as you may allow.

Mr. WAKELEY. I suggest the appropriate way would be for the President to communicate to the Convention how much time he requires for the announcement of the Committees.

The PRESIDENT. I think if a recess is taken until to-morrow at 10 o'clock I will have the Committees ready to announce, and those who desire to go to work can do so. Then if the Convention desire to adjourn until Monday they can do so before the trains leave.

Mr. MASON. In order to bring this matter before the Convention I now move to adjourn.

The motion agreed to.

The PRESIDENT. The Convention stands adjourned until to-morrow at 10 o'clock. (Several members, "The Rule is until 2 o'clock.")

Mr. LAKE. I move to reconsider the motion to adjourn.

Mr. HASCALL. I don't know of any rule by which we can do business after we have adjourned.

The PRESIDENT. The Chair will rule we had not absolutely adjourned, the Chair was in fault. The question is upon the reconsideration of the motion to adjourn.

The motion to reconsider agreed to.

Mr. MASON. I move to adjourn until to-morrow at 10 o'clock.

The motion agreed to.

So the Convention (at Eleven o'clock and twenty minutes) adjourned.

FOURTH DAY.

Friday, June 16, 1871.

The Convention was called to order at ten o'clock and five minutes by the President.

Prayer was offered by the Rev. L. B. Fifield, of Lincoln.

Mr. NEWSOM. Mr. President, I desire to ask leave of absence until 2 o'clock P. M. Monday, for Mr. Campbell, and also for Mr. Eaton.

Leave granted NEM. CON.

Reading of the Journal.

The journal of the previous day was read and approved.

The Secretary read the following:

Lincoln, Neb., June 16, 1871.

Hon. S. A. STRICKLAND,
President Constitutional Convention.

Sir:—In behalf of the Executive Committee I have the honor, cordially to invite the members and officers of the Convention to participate in the reception of the citizens of Otoe county this morning and enclose herewith, the order of exercises.

I am Sir,
Very respectfully yours,
A. W. KELLOGG,
Chairman Ex-Com.

Order of Exercises.

The train with the excursionists will arrive at 11 o'clock, A. M.

The Mayor and Council will meet them at the depot, where a procession will be formed and take the following line of march. Up J street to 10th, down 10th to O, down O to the grove where an address of welcome will be delivered by Elder J. M. Young.

Programme at the Grove.

Music, by the Band.
Address of Welcome.
Invocation, by Rev. H. P. Peck.
Music, by the Band.
Dinner.

After dinner the excursionists will disperse about town, visiting the public buildings or friends as they may desire. At 2:30 o'clock P. M., the procession will reform on Market Space and march to the depot. It is hoped every citizen of Lincoln will join in escorting our guests to and from the train. By order of the

EXECUTIVE COMMITTEE.

Printing.

Mr. CASSELL. I wish to offer the report of Committee on Printing.

The report was read by the Secretary:

Your Committee on printing respectfully submit the following report: That, in our opinion, the incidental printing is fully provided for in "An act to provide for calling a Convention to revise, alter or amend the Constitution of the State of Nebraska."

J. N. CASSELL.
E. N. GRENELL.
E. W. THOMAS.

Mr. McCANN. I move the report be accepted, and the Committee discharged.

The motion was agreed to.

Resolutions.

Mr. MASON. I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED. That the only legitimate province of government, is the preservation of order, the protection of life, the security of person and character and property, and to attain these fundamental objects, taxes may be rightfully and equally levied upon the property of the citizens; that whatever is taken from the citizens of the State under guise of taxation for objects or purposes other than these is wrong, oppressive, and unjust.

On motion referred to Committee on Bill of Rights.

Mr. ESTABROOK. Mr. President, your Committee on the matter of postage, beg leave to report.

The Secretary read the report as follows:

The Committee to whom was referred the matter of postage for this Convention would respectfully report that they have made arrangements with the Secretary of State, by which such postage will be by him satisfactorally adjusted with the Postmaster at Lincoln. The method advised is, that each member shall write his name upon the document transmitted, which is then to be properly stamped by the postmaster upon delivery at his office.

The following resolution is respectfully submitted.

RESOLVED. That the Secretary of State be directed to cause to be paid the postage bills of the members of this Convention, the document to be mailed having written thereon the name of the member sending the same.

E. ESTABROOK.
D. T. MOORE.
WM. PARCHEN.

Report accepted, and resolution adopted.

Mr. THOMAS. I would like to ask the Chairman of that Committee to state in their report the amount to which each member may use the franking privilege. It seems to me it would take too much out of the amount allowed to defray the expenses of this Convention. I think five dollars would be sufficient for each member.

Mr. ESTABROOK. I think that would appear like charging fraud upon some members of the House, and I do not wish to suggest that in our report.

Mr. THOMAS. I did not mean to intimate that any members would be guilty of fraud. A person may use the franking privilege, to the extent of ten dollars, without committing fraud. It seems to me there ought to be some limit to the amount to be used by each member.

Mr. ESTABROOK. I see no way of arranging that except to allow each member a certain number of stamps to stamp their own letters. That was the plan as adopted by the Legislature at one time and I am informed the postage under that order of things, amounted to 700 dollars, but subsequently when the members were allowed to frank their letters, and the Postmaster put on the stamps the postage amounted to only 400 dollars, so it is thought there was some stealing somewhere, and I am told further that a package of stamps was stole here by some one, If such an amount of documents seems to be coming from any one desk here, as would seem to be illegitimate, then it would be time to inquire into that matter, and stop the leak.

Mr. STEWART. I move the report be adopted and the Committee discharged.

The motion was agreed to.

Mr. ESTABROOK. I move the adoption of the resolution.

The motion was agreed to.

Announcement of Rules.

Mr. McCANN, Mr. President, I

wish to offer the following resolution:

The Secretary read the resolution as follows:

RESOLVED. That Rule 31 be so amended as to make the Judiciary Committee consist of thirteen (13) instead of eleven (11) members.

Mr. McCANN. Mr. President, the original number, suggested on that Committee, was thirteen; an amendment was offered reducing the number to nine, and it was finally fixed at eleven. It seems to be conceded that all the best legal talent of the State should be upon that Committee. We all admit that, whatever system be suggested by that Committee, it should be a good one. It is understood that all the gentlemen whom it is wished to be upon that Committee are not included. There is a larger number of lawyers in this Convention than was first supposed and I desire that all of the lawyers present be upon that Committee.

Mr. HASCALL. Mr. President, I am opposed to amending our rules, already passed and placed upon our desks for our guidance during this Convention. If the President cannot select eleven gentlemen from this Convention competent to perform this duty, we will have an opportunity to help them when it is brought before the Convention. Therefore, I do certainly object to increasing the number of our Committees. The Committees are so numerous, I presume the lawyers that are not upon this Committee will be needed on other Committees. I think the Legislative Committee will require as much legal talent as this Committee, and is just as important.

Mr. TOWLE. Mr. President, it appears to me that this Committee is extra large now, and especially so when we know that whatever is done by this Committee must come before the whole House and be subject to its action. I see by Rule 43 that "No rule of the Convention shall be altered, suspended or rescinded without the vote of two thirds of the members present."

The PRESIDENT. The question is upon the adoption of the resolution, as many as are in favor of it say aye.

Chair is in doubt. Convention divided.

The resolution was not agreed to.

Extra Clerks.

Mr. TOWLE. Mr. President, I wish to offer a resolution:

The Secretary read the resolution as follows:

RESOLVED. That the Secretary of this Convention, under the control and direction of the President, is hereby empowered to employ such necessary clerical assistance as may be necessary to keep up the proceedings of this Convention.

Mr. ESTABROOK. Mr. President, I would like to inquire if the mover of the resolution intends to include the labors of the Committees.

Mr. TOWLE. No, only assistance to the Secretaries.

Mr. THOMAS. Mr. President, according to my calculation we have already provided for $13,000 out of the $15,000 appropriated to defray the expenses of this Convention, supposing we should stay here thirty days. It seems to me we should be cautious about appropriating, and I do not think it is the proper time to provide for the employment of other clerks. We do not know, but should it become necessary I do not see that it is at present.

Mr. TOWLE. Mr. President, I have been informed by the Secretary, that it is necessary that assistance should be employed and given to them, and it appears to me that we should expedite matters, that we will save money, and that we will progress in our business much faster, if we have clerical force to keep up with the Convention, and not compel the Convention to drag, on account of the clerks not keeping up, and it was on account of the suggestion of the chief Secretary, that I introduced the resolution.

Mr. McCANN: Mr. President, I would remind my friend from Nemaha, that, if we have already provided for the expenditure of $13,000 out of the $15,000 appropriated for the expenses of the Convention that we may economise by having sufficient clerical force with keeping up our business, and not prolonging the Convention; If we save one or two days time by employing sufficient force, I hold it is economy, and hope the resolution will prevail, but would ask my friend's consent to amend, by authorizing the President to employ sufficient force for the use of the various Committees. As soon as our Committees are constituted, they must necessarily have some assistance, and, if this resolution will embody that, I am prepared to vote for it; I am prepared to vote for it any way, because I believe it to be a matter of economy, that we should have clerical force to keep up with the work.

Mr. KIRKPATRICK. Mr. President, I do not know that I fully understand the resolution. I am inclined to the opinion that that resolution takes it out of the power of the Convention to elect clerks; it will perhaps become necessary for this body to employ an enrolling clerk. This resolution doubtless takes the power away from the Convention. In regard to the necessity of extra clerks, I hardly see how it can be, we are not making a lengthy journal, I suppose that this day we will not make a lengthy journal; our Committees are not in full work, the labors will increase when the Committee business commences, and I am inclined to think it would be well to wait until those Committees are assigned their work, then, they will be the judges whether they need clerks or not, and what force they do need. I have heard gentlemen say that two or three hours was sufficient for the work of some of the Committees, would it not be extravagant to appoint a regular staff of clerks, if they had no more labor than that to perform? I hope the gentleman's motion will not prevail.

Mr. WEAVER. Mr. President, I hope the motion will prevail. The gentleman from Cass speaks of them taking the matter out of the hands of the Convention with very much reason from this fact, the Convention might spend an hour in electing a clerk, that might cost $50. which would pay a clerk nearly all the time employed here. We do not expect the President will employ a dozen, or one more than is needed; we expect he will employ clerks only as they are needed and imperatively demanded. I understand the chief Secretary is behind after working all last evening and it is necessary that a clerk should be employed immediately. I hope the resolution will prevail.

Mr. THOMAS. Mr. President, It seems to me that this motion is entirely premature; if it is true the clerks cannot keep up, it seems to me we will require a great many clerks to keep up; if the Convention believes it will be necessary hereafter to employ additional clerks I will not object, but it seems to me we cannot need them at this time; for this reason, I am opposed to the resolution.

Mr. McCANN. Mr. President, I understand this clerical force is only to be employed as absolutely needed. I do not understand we are to have one, two or three new clerks employed to-day, only upon the call of the Committee for assistance will the President afford them the necessary clerical aid. The amendment is that he have authority so to do. I do not understand we are to have another standing clerk, it is merely to be subsidiary to the strength we now have. They are only to be employed as absolutely needed.

The PRESIDENT. The last part of that resolution will be very embarrassing to me. It seems to me the Committees will know when they want assistance; if the Convention think I should regulate this matter I will try to do it as best I can.

Mr. KIRKPATRICK. Mr. President, I am opposed to reposing responsibility on our President that properly belongs to the Convention. I am opposed to putting out of power of this Convention the regulating its own employees. When the necessity arises for additional clerks, this body will be liberal enough to authorize it; when Committee clerks are needed, I have no doubt, the Chairmen of the Committees will signify that to this body and they will settle the matter, of course, by providing them.

Mr. MYERS. Mr. President, I concur with the gentleman from Nemaha that the resolution is premature; one thing is clear, it would increase the expense of the Convention to a considerable extent, it would soon be discovered and there would be a hundred applicants for those positions, and soon we would have 30 or 40 gentlemen walking into this hall as Secretaries of those Committees entitled, under the rules adopted, to the privileges of this floor; to avoid an evil of that magnitude, to avoid the selection of any Committee as being specially entitled to that favor, to avoid any discrimination, I think it is our duty to vote that resolution and amendment down. Another idea, Mr. President, is that each Committee can elect its own Secretary from its own body; let the Chairman act as Secretary. I suppose every one is abundantly able and capable of doing it. I am opposed to the increase of the clerical force of this Convention, for two reasons; first, its expense, secondly, we encumber it with unnecessary employees; I shall vote against the whole of it.

The amendment was not agreed to.

The resolution was not agreed to.

Janitor.

The PRESIDENT. Just here I wish to announce the appointment of A. KEENE as Janitor.

The PRESIDENT. I will announce the following as the Standing Committees of this Convention.

Standing Committees.

No. 1. Judiciary. Lake, Mason, Maxwell, Thomas, Scofield, Manderson, Towle, Philpott, Abbott, Griggs, Stevenson.

No. 2. Executive. Woolworth, Ballard, Speice, Robinson, Kirkpatrick, Newsom, Weaver.

No. 3. Legislative. Myers, McCann, Majors, Neligh, Moore, Griggs, Maxwell.

No. 4. Electoral and Representative Reform. Wakeley, Newsom, Hascall, Maxwell, Reynolds, Lyon, Wilson.

No. 5. Rights of Suffrage. Maxwell, Lake, Newsom, Estabrook, Price, Sprague, Curtis.

No. 6. Education, School Funds and Lands. Estabrook, Campbell, Majors, Shaff, Vifquain, Gray, Griggs, Moore, Philpott.

No. 7. Municipal Corporations. Thomas, Manderson, Parchen, Grenell, Scofield, Ballard, Kilburn.

No. 8. Railroad Corporations. Boyd, Mason, Kirkpatrick, Philpott, Ley, Vifquain, Tisdel.

No. 9. Miscellaneous Corporations. Moore, Maxwell, Hinman, Eaton, Price, Thummel, Granger.

No. 10. Revenue and Finance. McCann, Majors, Parker, Neligh, Boyd, Abbott, Towle.

No. 11. Banks and Currency. Neligh, McCann, Boyd, Griggs, Kilburn, Cassell, Gray.

No. 12. State, County and Municipal Indebtedness. Kirkpatrick, Reynolds, Wakeley, Shaff, Parker, Scofield, Neligh.

No. 13. Public Accounts and Expenditures. Thummel, Stewart, Weaver, Thomas, Lyon, Myers, Kenaston.

No. 14. Military Affairs. Vifquain, Manderson, Cassell, Hinman, Gray, Stevenson, Parchen.

No. 15. Retrenchment and Reform. Manderson, Tisdel, Campbell, Curtis, Ley, Speice, Sprague.

No. 16. Counties. Weaver, Kenaston, Neligh, Reynolds, Ley, Robinson, Newsom.

No. 17. Township and Precinct Organization. Griggs, Gibbs, Granger, Grenell, Gray, Eaton, Stewart.

No. 18. State Lands, (other than school lands.) Scofield, Boyd, Ley.

No. 19. Congressional Apportionment. Philpott, Hinman, Woolworth, Sprague, Shaff.

No. 20. Legislative Apportionment. Towle, Hascall, Stevenson, Wilson, Reynolds, Abbott, Kenaston.

No. 21. Manufactures and Agriculture. Ley, Eaton, Kirkpatrick, Wilson, Shaff, Lyon, Grainger.

No. 22. State Institutions and Public Buildings. Cassell, Lake, Ballard, Curtis, Parker, Gibbs, Campbell.

No. 23. Penitentiary and Reformatory Institutions. Stewart, Kilburn, Myers, Parchen, Speice, Thummel, Tisdel.

No. 24. Bill of Rights. Mason, Woolworth, Wakeley, McCann, Thomas, Lyon, Kilburn.

No. 25. Federal Relations. Abbott, Robinson, Speice, Price, Gibbs, Estabrook, Curtis.

No. 26. Future Amendments. Ballard, Eaton, Majors, Moore, Cassell, Myers, Vifquain.

No. 27. Printing and Binding. Campbell, Hinman, Kenaston, Wilson, Sprague.

No. 28. Roads. Parker, Parchen, Thummel, Tisdel, Granger, Grenell. Price.

No. 29. Internal Improvements. Shaff, Grenell, Stewart, Gray, Boyd, Majors, Lyon.

No. 30. Revision and Adjustment. Woolworth, Mason, Lake, McCann, Reynolds, Thomas, Weaver.

No. 31. Schedule. Hascall, Towle, Wakeley, Scofield, Stevenson, Estabrook, Robinson.

No. 32. Miscellaneous. Stevenson, Hascall, Weaver, Philpott, Price, Griggs, Newsom.

Mr. MYERS. Mr. President, I move that 200 copies of the Committee list be printed for the use of the Convention.

Motion agreed to NEM. CON.

Adjournment.

Mr. ESTABROOK. Mr. President, I move you, that when this Convention adjourn, it do so until Monday, at two o'clock.

The PRESIDENT. The question is upon the motion to adjourn.

The ayes and nays were ordered.

The Secretary called the roll.

The following is the vote:

AYES—18

Abbott,
Boyd,
Estabrook,
Granger,
Grenell,
Gray,
Kenaston,
Kilburn,
McCann,
Majors,
Manderson,
Neligh,
Newsom,
Parker,
Robinson,
Scofield,
Speice,
Wakeley,
Wilson,

NAYS—28

Ballard,
Cassell,
Curtis,
Gibbs,
Griggs,
Hascall,
Hinman,
Kirkpatrick,
Lake,
Ley,
Lyon,
Majors,
Mason,
Moore,
Myers,
Parchen,
Philpott,
Price,
Reynolds,
Shaft,
Sprague,
Stevenson,
Stewart,
Thomas,
Tisdel,
Towle,
Vifquain,
Weaver,

ABSENT OR NOT VOTING.

Campbell,
Eaton,
Maxwell,
Mason,
Thummel,
Woolworth,

So the motion to adjourn by Mr. Estabrook was not agreed to.

Leave of Absence.

Mr. MANDERSON. Mr. President, I desire leave of absence until Monday noon.

Leave granted NEM. CON.

Printing.

Mr. PHILPOTT. I desire to call up a resolution I offered yesterday in reference to printing. I think the resolution is a just one.

Mr. MYERS. Mr. President, I rise to a point of order. No gentleman in this house knows what the gentleman from Lancaster county is discussing. There is nothing before the house

The PRESIDENT. The gentleman will pass up his resolution.

Mr. PHILPOTT. I did yesterday, I ask that it be read.

The Secretary read the resolution as follows:

RESOLVED. That the Secretary of State be directed by this Convention to immediately advertise for five days to receive bids for the price for which parties bidding will do the necessary printing for the Convention, and that he be instructed to award the printing to the lowest bidder.

Mr. PHILPOTT. I move the passage of the resolution. This is the language of Sec. 8 of the Act to provide for the calling of this Convention:

> It shall be the duty of the Secretary of State to attend said Convention at the opening thereof; and he and all other public officers shall furnish said Convention with all such statements, books, papers and public documents in their possession, or pertaining to their office, as the Convention may order or require; and it shall be the duty of the Secretary of State to furnish the members with such stationery as is usual for the Legislature while in session, and to cause such printing to be done as the Convention may require.

Now I don't doubt, but that he will cause this printing to be done, but for my part, I am not in favor of leaving this matter wholly in the hands of one individual. I believe that it should be directed by this Convention that the Secretary advertise for bids. I think this is just and right. It opens up the field and gives all an opportunity to come in with their bids, and we will get our printing done cheaper than under the present arrangement, where it is left in the hands of one individual, who may let it out to a single favorite party. The printing should be done under the direction and control of this Convention. On the part of our constituents, we have the right to see that this printing, and everything else, may be done in a manner to save money. For these reasons. I urge the passage of this resolution.

Mr. TOWLE. Mr. President, I ask leave of absence until 2 o'clock P. M. Monday, for Mr. Scofield.

Leave granted NEM. CON.

Mr. GRAY. I wish to ask leave of absence for myself for same length of time.

Leave granted NEM. CON.

Mr. HASCALL. I would ask leave of absence until 2 o'clock P. M. Monday, also.

Leave granted NEM. CON.

Mr. WAKELEY. Mr. President, I ask leave of absence until Tuesday morning.

Leave granted NEM. CON.

Printing Again.

Mr. ESTABROOK. I think from the reading of the law, that this matter is already provided for, I read from our present Constitution under the head of "Legislative".

> Sec. 23. The Legislature shall provide by law that all stationery required for the use of the State, and all printing authorized and required by them be done for their use, or for the State, shall be let by contract to the lowest bidder; but the Legislature may establish a maximum price. No member of the Legislature, or other State officer, shall be interested, either directly or indirectly in any such contract.

This resolution is objectionable in that it confines the printing to Nebraska printers. Under the oath I have taken to support the Constitution I shall feel myself constrained to vote against the resolution.

Mr. HASCALL. I will remind the General, that he has not taken an oath to support the Constitution of this State.

Mr. ESTABROOK. I have taken an oath to do my duty.

Mr. MANDERSON. I move to amend the resolution by striking out the words "Nebraska printers."

The amendment was agreed to.

Mr. THOMAS. I understand that the resolution now permits printers outside of the State to bid, I would like to have the resolution read.

(Resolution read by the Secretary).

Mr. ESTABROOK. It seems to me we are in some little difficulty. We need printing from day to day. I have an idea that there are contracts already extant governing these cases, if there are not there should be.

Mr. PHILPOTT. We cannot tell just now whether these contracts have been awarded or not but I do not think the contracts ought to have been made. I think we can control this matter ourselves.

Mr. TOWLE. For my part, I can see no occasion for disagreement or difficulty over this printing. Now the printing of the journal and the printing of the debates of the Convention will rest entirely with the next Legislature I think. In my opinion the $15,000 appropriated will scarcely last us for our regular expenses for thirty days. We should economize or we will find ourselves sitting here without pay. Now I think the whole matter of incidental printing should be left in the hands of the Secretary of State. I think the incidental printing of this Convention should not amount to over $250 or $300 for the whole session, and the contract for the printing of the journal and the debates should be entered into by the proper authorities.

Mr. KIRKPATRICK. The gentleman will bear in mind one thing, the reporters are employed to report the speeches made here at the rate of $30 per day, now some means for printing this matter should be provided, or we might as well not have the speeches reported. I think, however, we had better let the matter stand for the present.

Mr. TOWLE. Mr. President, I simply wish to read Sec. 8. of the Act providing for calling this Convention.

> "It shall be the duty of the Secretary of the State to attend said Convention at the opening thereof; and he and all other public officers shall furnish said Convention with all such statements, books, papers and public documents in their possession, or pertaining to their office as the Convention may order or require. And it shall be the duty of the Secretary of State to furnish the members with such stationery as is usual for the Legislature while in session and to cause such printing to be done as the Convention may require.

In having this printing done, and done especially as demanded, the Secretary would have to be there when the first copy is made to look over the proof sheets, and it would be impossible for him to do this if the printing was done away from here. I therefore think it should be done here.

Mr. PHILPOTT. I do think the printers of this town can compete with the other printers in the state. I am informed that it can be done for about a thousand dollars, but that four or five hundred dollars could be saved by letting it to the lowest bidder, and I am in favor of saving even that amount. And five days are not long to wait for that.

Mr. LAKE. I don't suppose this convention have a right to make laws. We have a right under the law creating this body to call for printing, but it is left for the Secretary of State to furnish that printing, and it is made his duty to furnish what we demand. Under this law it seems to me we have no authority on this question; and for this reason I shall be compelled to vote against the resolution.

Mr. ESTABROOK. I move that this resolution be referred to the Committee on Printing and Binding, Number 27 of the Standing Committees.

Mr. MYERS. I move to indefinitely postpone the consideration of the resolution.

The "yeas" and "nays" were ordered. The Secretary proceeded to call the roll.

Mr. ESTABROOK. (when his name was called said) A word of explanation. I vote no on this; but will vote to have it referred, as there seems to be some doubt about our duties and authority.

The result was then announced, yeas 19, nays 26 as follows:

YEAS—19

Abbott,
Ballard,
Gibbs,
Grenell,
Gray,
Hascall,
Kenaston,
Kirkpatrick,
Lake,
Ley,
Lyon,
Majors,
Myers,
Neligh,
Parchen,
Price,
Stevenson,
Shaff,
Towle,

NAYS—26

Boyd,
Curtis,
Cassell,
Estabrook,
Granger,
Griggs,
Hinman,
Kilburn,
Manderson,
Moore,
McCann,
Newsom,
Parker,
Philpott,
Reynolds,
Robinson,
Stewart,
Sprague,
Speice,
Thomas,
Tisdel,
Vifquain,
Wakeley,
Weaver,
Wilson,
Mr. President,

ABSENT OR NOT VOTING—7

Campbell,
Eaton,
Mason,
Maxwell,
Scofield,
Thummel,
Woolworth,

So the motion was not agreed to.

Mr. WAKELEY. Mr. President, I believe the question now is on the reference to the Committee on Printing. I move to amend by referring to Committee on Judiciary. My reason is because the question is upon the law, whether we have the authority to control this matter.

Mr. ESTABROOK. I accept the amendment.

The motion agreed to.

Adjournment.

Mr. McCANN. I move to adjourn.

Leave of Absence

Mr. WAKELEY. Will the gentleman give way for a moment, I wish to ask leave of absence for my colleague, Mr. Boyd, until 2 o'clock on Monday.

Leave granted NEM. CON.

Mr. PARKER. I ask leave of absence for Mr. Sprague until Monday at 2 o'clock.

Leave granted NEM. CON.

Mr. SPEICE. I ask leave of absence until Tuesday at 2 o'clock.

Leave granted NEM. CON.

Adjournment Again.

Mr. ABBOTT. I move to amend the motion, that we adjourn until 2 o'clock on Monday.

The motion was agreed to.

So the Convention (at eleven o'clock and thirty minutes) adjourned.

FIFTH DAY.

Monday June 19, 1871.

The Convention met at two o'clock P. M. and was called to order by the President.

Prayer.

Prayer was offered by the Rev. Mr. Fifield of Lincoln, as follows:

Our Father, Thanksgiving to thee, for thy good providence toward us. Continue that providence, we pray. Give wisdom to the Convention for the labors of the week. Send wisdom, and give understanding, we beseech Thee. Amen.

Call of the Roll.

The Secretary called the roll.

Present.

Messrs. Abbott, Ballard, Boyd, Curtis, Cassell, Campbell, Eaton, Estabrook, Gibbs, Granger, Grenell, Gray, Griggs, Hascall, Kenaston, Kilburn, Kirkpatrick, Lake, Ley, Lyon, Majors, Mason, Manderson, Moore, Myers, McCann, Neligh, Newsom, Parchen, Parker, Price, Stevenson, Stewart, Sprague, Shaff, Thummel, Tisdel, Towle, Vifquain, and Weaver.

Absent on Leave.

Messrs. Wakeley, and Woolworth.

Absent.

Messrs. Hinman, Maxwell, Philpott, Reynolds, Robinson, Scofield, Speice, Thomas, and Wilson.

Leave of Absence.

Mr. KIRKPATRICK. Mr. President, I ask leave of absence for Mr. Maxwell until 10 o'clock to-morrow morning.

Leave granted NEM. CON.

Mr. McCANN, Mr. President, I ask leave of absence for Mr. Scofield until to-morrow morning.

Leave granted NEM. CON.

Mr. GRIGGS. I ask leave of absence for Mr. Reynolds until to-morrow morning.

Leave granted NEM. CON.

Mr. ABBOTT. I ask leave of absence for Mr. Speice until to-morrow morning.

Leave granted NEM. CON.

Reading of the Journal.

The journal of the previous meeting was read and approved.

Presentation of Petitions.

Mr. PRICE. Mr. President, I have a petition to present.

Petition read by the Secretary, as follows.

To the Constitutional Convention of the State of Nebraska. We the Undersigned, legal voters of Jefferson county, Nebraska, respectfully ask that an article be placed in the Constitution of the State, prohibiting counties from taking stock in railroads; or voting aid to railroad enterprises, by means of taxation upon the people. Signed by Albert N. Crawford and 87 other voters of Jefferson county.

Mr. PRICE. I move the petition be referred to Committee on Railroad Corporations.

Mr. KIRKPATRICK. I think it ought to go to the Committee on State, County and Municipal Indebtedness.

The motion was not agreed to.

Mr. GRAY. Mr. President, I move that the petition be referred to the Committee on State, County and Municipal Indebtedness.

The motion was agreed to.

Presentation of Resolutions, and Propositions to Amend the Constitution.

Mr. STEWART. I have a resolution.

Resolution read by the Secretary as follows:

RESOLVED; That the Constitution of the State be so amended, that the House shall consist of sixty-three members, and that that of the Senate, of twenty-one members; and that for this purpose the State should be divided into 63 Representative, and 21 Senatorial districts of contiguous territory, and as nearly equally populated as possible; and that one member should be elected from each district, and that no elector shall vote for more than one Senator and one Representative at the same election, and that the Legislature at its next session shall so apportion the same.

Mr. STEWART. I move that the resolution be referred to the Legislative Committee.

The motion was agreed to.

Mr. STEWART. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED; by the Convention that all executive, legislative and judicial officers shall be elected by the people, and that the compensation to be allowed for official service in the several departments of the Government shall be fixed by the Constitution and shall not be increased or diminished by the Legislature.

The PRESIDENT. Gentlemen, what shall be done with the resolution.

Mr. McCANN. Mr. President, I move it be referred to the Legislative Committee.

Mr. ESTABROOK. I would suggest it be referred to the Committee on Electoral and Representative Reform.

Mr. McCANN. I accept.

Mr. CURTIS. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That no person shall be eligible to any county, precinct or school office in this State, who has not resided in the State one year previous to his election to such office.

And no person shall be eligible to the office of Representative or Senator in the State Legislature, who has not been a resident of the State two years previous to his election to such office.

And that no person shall be eligible to any State office, who has not been a resident of the State two years before his election or appointment to such office.

And that no person shall be eligible to the office of Governor of this State, Representative or Senator in Congress who has not resided in this State three years previous to his election to such office.

Mr. STEWART—Mr. President, I move that the resolution be referred to the Committee on Electoral and Representative Reform.

The resolution was so referred, NEM. CON.

Mr. TOWLE. Mr. President, I call for the reading of the resolution I sent up.

The PRESIDENT. The Secretary will read the resolution sent up by Mr. Towle.

The Secretary read the resolution as follows:

RESOLVED BY THIS CONVENTION; That the Auditor of State be requested to furnish a comprehensive and tabular statement upon the following points pertaining to the receipts and expenditures of the State of Nebraska.

1st. The total amount of assessments by counties, of the State of Nebraska, for the years of 1867, 1868, 1869, 1870 and 1871.

2nd. The amount of State General Fund, Sinking Fund, State School Fund and University Fund by counties, levied for years 1867, 1868, 1869 and 1870.

3rd. The amount of State General Fund, Sinking Fund, State School Fund and University Fund collected from the different counties for the years 1867, 1868, 1869 and 1870.

4th. The amount of orders or warrants drawn on the said funds in the years 1867, 1868, 1869, 1870.

5th. The amount of the appropriations of each Legislature of each fund for the years 1867, 1868, 1869, 1870, 1871 and 1872.

6th. The amount or percentage of levy per hundred dollars on the total assessment of each fund for the years 1867, 1868, 1869, and 1870.

Mr. TOWLE. Mr. President, I move the passage of the resolution.

The motion was agreed to.

Mr. KIRKPATRICK. Mr. President, I wish to offer a resolution. I have conferred with the Auditor, and he is ready to make this statement.

The Secretary read the resolution of Mr. Kirkpatrick, as follows:

RESOLVED; That the Auditor of State be requested to furnish to this Convention without delay, a statement showing the entire indebtedness of the State outstanding and unpaid at this date, and including all unpaid and outstanding warrants and bonds of the Territory of Nebraska.

Mr. KIRKPATRICK. Mr. President, I move that the resolution be adopted.

The motion was agreed to.

Mr. MOORE. Mr. President, I have a resolution which I wish to offer.

The Secretary read the resolution as follows:

RESOLVED; That the Committee on the rights of Suffrage be instructed to inquire into the expediency of incorporating in the Constitution, a Section permanently excluding from the rights of Elective Franchise, all persons who may be convicted by a Court of Record of having received, or who paid, or offered to pay money or other valuable things, or promised any consideration, place or office with a view of securing or preventing the election of any candidate for any Federal, or local office.

The PRESIDENT. Gentlemen, the question is upon the referring of this resolution.

Mr. MOORE. I move that it be referred to the Committee on Rights of Suffrage.

The motion was agreed to.

Mr. MANDERSON. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED; That the Secretary of State be requested to furnish for the use of the Convention fifty two copies of Colton's late pocket map of Nebraska.

Mr. MANDERSON. I move the adoption of the resolution.

The motion was agreed to.

Mr. HINMAN. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That each organized county shall be entitled to at least one Representative in the lower House of the State Legislature.

Mr. HINMAN. I move that the resolution be referred to the Committee on Legislative Apportionment.

The motion was agreed to.

Mr. ABBOTT. Mr. President I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That the State Superintendent of Schools, be and he is hereby requested to furnish this Convention with a statement showing the whole number of acres of school lands sold; the average price per acre; the whole number of acres of school lands selected under the Homestead and Pre-emption laws, and the whole number of acres selected in lieu thereof, if any, the title to which has be confirmed to the State.

Mr. ABBOTT. Mr. President, I move the passage of the resolution.

Mr. MANDERSON. Mr. President, I would ask for the reading of the resolution again.

The Secretary reads the resolution again.

Mr. ESTABROOK. I favor the resolution, but would like to have something added.

Mr. HASCALL. Mr. President, I would suggest that the statement show the number of acres sold in the respective counties and the amount per acre.

Mr. ABBOTT. I accept that as an amendment.

Mr. ESTABROOK. I should think that the Committee on Education, School Funds and Lands, would be the Committee. I move its reference to that Committee.

The resolution was so referred.

Mr. BOYD. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

WHEREAS; There are yet untilled in the State of Nebraska millions of acres of virgin prairie, the richest in the world,, waiting only the hand of the farmer to contribute its abundant stores to the support of man, and

WHEREAS; Owing to the limited amount of building material and fuel in some parts of the State, the best interests of the people demand the speedy construction of railroads in order to supply the early settler with this great need, and give him a convenient market for his produce, and

WHEREAS; Donations and subscriptions in aid of legitimate improvements have been productive of great benefit, but that, in order to guard against the schemes of reckless men and grasping corporations therefore,

RESOLVED; That the Committee on State, County and Municipal Indebtedness, be instructed to inquire into the expediency of inserting in the Constitution a clause granting the right to any county, city, town, precinct or other municipality to subscribe, donate or loan its credit in aid of railroads or other works of internal improvements, to an amount not to exceed, in the aggregate, ten per centum of its assessed valuation,

PROVIDED; A proposition setting forth the nature and amount of aid proposed to be given, shall first be submitted to the voters of said county, city, town or precinct or other municipality, at a general election, and a majority of the whole number of votes of said county, city, town, precinct or other municipality be polled in favor thereof.

Mr. MANDERSON. Mr. President, I move its reference to the Committee on State, County and Municipal Indebtedness.

The motion was agreed to.

Mr. WEAVER. Mr. President, I desire to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That the Secretary of State be requested to furnish each member of this Convention with an abstract showing the population and valuation of each county, according to the most recent census and return.

The resolution was adopted NEM. CON.

Mr. MASON. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED; That the Committee on Legislature be instructed to inquire and report as to the expediency of a Constitutional provision, providing that no county, city, town, township or school district, shall ever become a subscriber to the capital stock of any private corporation or make any donation to, or loan its credit in aid of any such corporation.

Mr. CAMPBELL. I move the reference to the Committee on Municipal Corporations.

The motion was agreed to.

Mr. VIFQUAIN. Mr. President, I desire to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That no laws will be passed abridging the privilege of our citizens to enjoy themselves as they please on Sunday or in any way interfering with the customs of our foreign born citizens, upon that day from 12 o'clock M.

Mr. WILSON. I move the resolution be laid upon the table.

The Convention divided and the motion was not agreed to.

Mr. NEWSOM. Mr. President, I move the resolution be referred to the Committee on Bill of Rights.

The motion agreed to.

Mr. PRICE. Mr. President, I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That the Committee on Rights of Suffrage, be instructed to enquire into the propriety of striking the word "male" from the Constitution, wherever it occurs so as to prevent any citizen from exercising the rights of suffrage.

Mr. PRICE. I move the adoption of the resolution.

Resolution referred to Committee on Bill of Rights.

Adjournment.

Mr. BALLARD. I will now make a motion to adjourn.

The motion to adjourn was agreed to.

So the Convention, (at two o'clock and fifty-five minutes,) adjourned.

SIXTH DAY.

Tuesday, June 20, 1871.

Convention called to order by the President at 10 o'clock A. M.

Prayer.

Prayer was offered by the Rev. Mr. Fifield of Lincoln, as follows:

Merciful God, our Heavenly Father, may it please Thee to be with us this day, forget us not in our work, defend this State and people, may leaders, magistrates and rulers look toward Thy throne, may they consider Thy holy will; save us, Oh, Lord, save this commonwealth we pray Thee. Amen.

The Secretary read the journal of the last day's proceedings which were approved.

The PRESIDENT. Will the gentleman from Cass, (Mr. Kirkpatrick), take the Chair for a moment?

Mr. KIRKPATRICK took the Chair.

Reports of Standing Committees.

Mr. GRAY. Mr. President, Your Committee on Education, School Funds and Lands, beg leave to report the following.

I make this report at the request of the Chairman of the Committee. This report is a substitute to the original resolution and I will read it.

BE IT RESOLVED; by the Constitutional Convention, that the State Auditor be and is hereby requested to furnish this Convention with a statement showing

1st. The whole amount of common school lands sold.

2nd. The county where the sale was had.

3rd. The average price per acre in each county where sold.

4th. The amount of school land taken under the Homestead and Preemption laws.

5th. The amount selected in lieu thereof, the title of which has been confirmed to the State, and the description thereof.

6th. The actual, or estimated amount of common school lands in the State.

7th. How much has been raised annually by direct taxation as State school tax, for the use of schools, and what proportion of the same has been used for the support of schools, and what for pay of officers or other expenditures.

8th. The interest accruing to the school fund, from school lands sold, and the income from the lease of school lands in this State.

Mr. Chairman, the substitute the Committee offers is substantially the same as the original resolution referred to them, with the exception that instead of requesting the State Superintendent of schools to furnish this the Auditor by the substitute, is requested alone to furnish it. They have added, you will observe, more in the substitute than was originally embodied in the resolution, but the report contains the same information.

Mr. HASCALL. Mr. President, I moved the report be received and the substitute adopted.

The motion agreed to NEM. CON.

Resolutions.

Mr. HASCALL. Mr. President, I have a resolution I desire to offer.

The Secretary read the resolution as follows:

RESOLVED; That the Committee on Miscellaneous Subjects are hereby instructed to prepare and report a Section to be inserted in the Constitution, locating and fixing the permanent seat of Government of the State at the City of Lincoln.

Mr. HASCALL. Mr. President, I move the adoption of the resolution.

The ayes and nays were demanded.

Mr. WAKELEY. I will inquire if, under the Standing Rules, it is not necessary that that resolution should go to some appropriate Committee. I therefore make it a point of order that that disposition must be made of it.

Mr. SPRAGUE. It will be seen by referring to rule 36, that the gentleman from Douglas, (Mr. Wakeley), is correct.

Mr. McCANN. I move that the resolution be referred to the Committee on State Institutions and Public Buildings.

Mr. HASCALL. I withdraw the proposition to adopt, as I see the rule contemplates it should go to a Committee.

The PRESIDENT. The gentleman from Douglas (Mr. Hascall), withdraws his motion.

The question is on referring to the Committee on State Institutions and Public Buildings.

Mr. ESTABROOK. It seems to me that is hardly the appropriate Committee.

Mr. HASCALL. I think it should be referred to the Committee on Miscellaneous Subjects, for the reason that it is a matter which would arise necessarily under that head.

Mr. McCANN. I accept the amendment, Mr. President.

The motion to refer to the Committee on Miscellaneous Subjects, was agreed to.

Mr. ROBINSON. I have a resolution to offer, Mr. President.

Mr. LAKE. Mr. President, I have a resolution.

The PRESIDENT (pro tem). I have been requested to ask the members not to hurry their resolutions too rapidly.

The Secretary read Mr. Robinson's resolution as follows.

RESOLVED; Any party to a suit feeling himself aggrieved by alleged error or errors of law apparent upon the records, shall have the right in all cases, whether civil or criminal, to prosecute proceedings in the proper appellate tribunal to have such alleged error or errors of law reviewed, and to receive appropriate relief. Provided, that in criminal cases where the State prosecutes such proceedings no new trial shall be had for any such errors of law if the defendant stands charged upon the record with an offence punishable by imprisonment.

Mr. LYON. Mr. President, I have a resolution to offer.

The Secretary read the resolution offered by Mr. Lake as follows:

RESOLVED; That the Secretary of State, Auditor and Treasurer be and they are hereby requested to report to this Convention as soon as practicable whether any contract, or contracts were entered into in the year 1870, on behalf of the State with any person, or persons, for the State printing, or whether any such contract is now in force, as provided in the Act of the Legislature of Nebraska, approved June 18, 1867, and if any there be, that they furnish a copy or copies thereof forthwith for the use of this body.

RESOLVED; That copies of the above resolution be delivered to each of the officers named in the foregoing resolution by the Secretary of the Convention.

Mr. LAKE. Mr. President, I move the adoption of the resolution.

Motion agreed to.

The Secretary read the resolution offered by Mr. Lyon as follows.

WHEREAS; The ballot, in the hands of freemen is their shield and protection therefore

RESOLVED; That no person of suitable age, moral and intellectual attainments shall ever be deprived of its use.

Mr. LYON. I move the resolution be referred to the Committee on Rights of Suffrage.

Motion was agreed to.

Mr. WEAVER. I have a resolution to offer, Mr. President.

The Secretary read the resolution as follows:

RESOLVED; That an article be incorporated into the Constitution guaranteeing to all citizens, who by their religious faith observe the Seventh day of the week, or Saturday, as a day of worship, the privilege of transacting all legitimate business upon the first day of the week—known as "Sunday."

Mr. WEAVER. Mr. President, I move it be referred to the Committee on Bill of Rights.

The motion was agreed to.

Mr. STRICKLAND. Mr. President, I have a resolution which I wish to offer, and after its being read by the Secretary, to ask its reference to the Committee on Rights of Suffrage.

The Secretary read the resolution as follows:

RESOLVED; That the Committee on "Rights of Suffrage" be and they are hereby instructed to report an article to the Constitution for the consideration of the Convention conferring upon females the right to vote at all general and special elections in the State; and also to provide for the submission of said article to a vote of the people of the State in the following manner: that said article, before it becomes operative be submitted to a vote of the people of the State at which election, both males and females shall be entitled to vote under the same rules and regulations as are now prescribed by law for male electors; the male voter to vote for or against said article at the same time and place that the vote is taken on the adoption or rejection of the Constitution and there shall also at the same time and place, be provided separate ballot boxes for the reception of the votes of the females, and if it be found that a majority of both male and female electors are in favor of said article, then the same to remain a part of the Constitution, but if a majority of either be against said article, the same to be deemed rejected and in that case to form no part of said instrument.

Referred to Committee on Rights of Suffrage NEM. CON.

Mr. STEWART. I have a resolution to offer.

The resolution was read by the Secretary as follows:

RESOLVED; That Sec. 7 of the Constitution of this State, under the head of "Judiciary" shall be so amended, that no entrance fee shall be required on the commencement of suits in the District Courts of this State.

Mr. STEWART. I move it be referred to the Committee on Judiciary.

The motion was agreed to.

Mr. MOORE. Mr. President, I wish to offer a resolution.

Mr. CURTIS. Mr. President, I have two resolutions to offer.

Mr. ESTABROOK. Mr. President, It seems to me that the manner in which these resolutions are being introduced, causes a little confusion.

It seems to me that when a gentleman rises to address the Speaker, his resolution should be first considered and disposed of before others are offered.

The PRESIDENT. (pro tem.) The Chair has already made that request,

Mr. GRIGGS. I would suggest that when the Secretary reads the resolution, he give the name of the gentleman offering it.

Mr. MYERS. Mr. President, every gentleman should endorse his name on his resolution before he sends it to the Secretary's desk.

The PRESIDENT (pro tem). The Chair has requested that this be done, and in this way much confusion will be avoided.

The Secretary read the first resolution offered by Mr. Curtis, as follows:

RESOLVED; That the office of Lieutenant Governor, be created in this State.

Mr. MANDERSON. I move it be referred to the Executive Committee.

The motion was agreed to.

The Secretary read the second resolution offered by Mr. Curtis, as follows:

RESOLVED; That the Judiciary Committee submit a report to this Convention on the Constitutionality of abolishing the Grand Jury System in this State.

Mr. ESTABROOK. I move the resolution be referred to the Judiciary Committee.

The motion was agreed to.

The Secretary read the resolution offered by Mr. Moore as follows:

WHEREAS; Railroad corporations can only exist by having conferred upon them the supreme power of taking private property belonging to the people, and applying it to their own benefit and use and

WHEREAS; many just complaints have from time to time arisen, of unjust and disproportionate charges for transportation of freight and passengers, the often wanton and useless destruction of private property of individuals along the lines of railways, and their refusal to make just compensation to the owners for the same, without a long and expensive law suit, the often destruction of life and limb of passengers by the carelessness of officials and agents, therefore

BE IT RESOLVED; That the Committee on Railroad corporations, (No. 8) be instructed to provide some safeguard in the Constitution requesting the General Assembly upon their first meeting, to provide by law for the full and complete protection of the people from these and other abuses.

Referred to Committee on Railroad Corporations, NEM. CON.

Mr. ROBINSON. Mr. President, I offered a resolution which was read by the Secretary but no action taken on it, I move it be referred to the Committee on Judiciary.

The resolution was so referred NEM. CON.

Mr. Moore. Mr. President, I move the resolution offered by me and just read by the Secretary be referred to Committee on Railroad Corporations (No. 8).

The resolution was so referred NEM. CON.

Mr. NEWSOM. Mr. President, I have a resolution I desire to offer.

The Secretary read the resolution as follows:

RESOLVED; That the Committee on Revenue be instructed to inquire into and report as to the expediency of a Constitutional provision governing the Legislature in levying the needful tax for revenue by valuation so that every person and corporation shall pay a tax in proportion to the value of his or her property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and said tax shall not exceed———per cent of said valuation, over and above the amount of revenue necessary for the payment of the interest now provided by law on the State and county indebtedness and the sinking fund.

Mr. NEWSOM. Mr. President, I move the resolution be referred to the Committee on Revenue and Finance.

The motion was agreed to.

Mr. THUMMEL. Mr. President, I have a resolution I desire to offer.

The Secretary read the resolution as follows:

RESOLVED; That the State Auditor be requested to furnish this Convention a statement showing the various amounts that have been appropriated for and expended on the Capitol building and grounds.

Mr. THUMMEL. Mr. President, I move the adoption of the resolution.

Mr. ESTABROOK. This is amenable to the same objection raised on the other resolution that it must first be referred to an appropriate Committee.

Mr. THUMMEL. This is not a proposition to amend the Constitution but simply an inquiry for information.

The motion to adopt was agreed to.

Mr. KENASTON. Mr. President, I wish to call attention to the resolution offered by me and ask that it be read.

The Secretary read the resolution as follows:

RESOLVED; That no county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law and two thirds of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months, and in the election precinct 90 days next preceding such election.

The question of the removal of a county seat shall not be oftener submitted than once in five years to a vote of the people. But when an attempt is made to remove a county seat to a point nearer to the center of a county then a majority vote only shall be necessary.

Mr. McCANN. Mr. President, I move the resolution be referred to the Committee on Counties.

The motion agreed to.

Mr. CAMPBELL. Mr. President, I offer a resolution.

The Secretary read the resolution as follows:

WHEREAS; The ninety thousand acres of land donated by Congress to the State of Nebraska for an agricultural College has been forfeited to the State on account of the nonpayment of the land office fees, therefore,

RESOLVED; That the Judiciary Committee be instructed to investigate the propriety of inserting in the Constitution an article requiring the Attorney General to commence suit for the recovery of the land so forfeited.

Mr. CAMPBELL. Mr. President, I offer this resolution for the purpose of getting information for the Convention on this matter. If I have been correctly informed this land was selected in 1868, and in 1868 notice was given, if the land office fee was not paid, the land would be forfeited, and it was ordered that the amount, $600, should be paid out of the general fund. But there was no money at that time in the general fund and consequently the land office fee was not paid.

This fact remained a secret until after the close of the last legislature and after that it was made known, but secretly. The result was that a few members of the Legislature and persons connected with the land office who were permitted to know of the forfeiture entered up that land or the most of it. I would like to have this matter investigated and therefore move the adoption of the resolution.

Mr. HASCALL. Mr. President, for fear some misapprehension may be had on this matter I would say the hands of the present Legislature is clear of having anything to do with this land, it belongs to the Legislature immediately preceding this. The loss to the State of ninety thousand acres of land should be charged where it properly belongs with those who are guilty, which is certainly the Legislature previous to the one which has just adjourned.

Mr. McCANN. I believe we can obtain the desired information from the gentleman from Douglas (Mr. Hascall) and I would like to ask him if this land was forfeited by the nonpayment of the land office fees?

Mr. HASCALL. I will say that I have no official information from the land office on that subject, but I am reliably informed that the land has been forfeited and has been entered by parties who knew when the forfeit was made. I think the proper way to investigate this matter is to get the names of these parties so entering and the amount of the land lost, and request the committee to investigate this matter by way of inquiry.

Mr. McCANN. Mr. President, If the motion has not already been made, I move that this resolution be referred to the Committee on Judiciary and Judicial Districts.

Mr. ESTABROOK. Mr. President, It seems as though we never shall be done of hearing of new—

Mr. STEWART. Mr. President, I rise to a point of order. I believe these Resolutions should be referred to Committees without debate.

The PRESIDENT. (Pro Tempore,) What rule does the gentleman refer to?

Mr. STEWART. Rule No. 36.

Mr. MYERS. I move that this resolution be referred to a Special Committee.

The PRESIDENT. (Pro Tempore,) The question of order will be settled first.

Mr. ESTABROOK. If this is a proposition to amend the Constitution it goes without debate. I would enquire whether it is a resolution that contemplates any amendment.

The PRESIDENT. (Pro Tempore,) It is asking investigation by a certain committee.

Mr. CAMPBELL. The resolution provides that the Judicial Committee be instructed to enquire into this matter. I move its reference to that Committee.

The PRESIDENT. (Pro Tempore,) That motion has been made and stated.

Mr. ESTABROOK. Mr. President, That committee has very much referred to it already. It is expected to give advice, its opinion in regard to purely local questions that may arise here. This is a subject that demands investigation as to facts, not law, facts. It seems that here is another big steal; I have never before heard of this larceny if it be true. We had it as a matter of casual debate, as to what had become of our Agricultural College Lands, in our School Committee. I have never seen any report of them, it is now opening a new vein, a new lode; I would like to have it thoroughly investigated or probed; I want it to go to some Committee of enquiry, that the facts in this case may be fully ascertained and exposed; this is another source of rottenness; I do not know who are the parties at fault, I think a special Committee should be appointed. Messrs. Hascall, Thomas and Dr. Campbell would do, they seem to be apprised of these performances. It is immaterial who the special Committee are so that the matter be fully investigated.

Mr. McCANN. Mr. President, I withdraw my motion to refer it to the Judicial Committee and move it be referred to a special Committee of three.

Mr. HASCALL. Mr. President, I prefer not to be on that Committee for the reason that if the Committee should place the responsibility upon the prior Legislature it would place myself in a wrong attitude. I prefer that disinterested parties.

The PRESIDENT (pro tem.) It may not be ordered.

Mr. HASCALL. I understood the motion had been made and seconded and stated by the Chair, but if the gentleman withdraws it, I believe that leaves us without any motion.

The PRESIDENT (pro tem). The motion was to refer it to the Judiciary Committee, that was withdrawn, another motion was to refer it to a special Committee of three.

Mr. MASON. Mr. President, I move to refer the resolution to the Committee on Education, School Funds and Lands, the Standing Committee of which Mr. Estabrook is Chairman.

The PRESIDENT (pro tem.) That would seem to be the proper reference; the Chair will not undertake to decide. I believe that a motion to refer to a Standing Committee takes precedence.

Mr. MASON. The motion to refer to a Standing Committee takes precedence of a special committee.

The motion was agreed to.

Mr. GRAY. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED; That the following be incorporated into the new Constitution as one of the Articles thereof and which shall be submitted in such manner as that it can be voted upon separately and independent of the other articles of the new Constitution to wit:

Article.

Sec.--No County, City, Town, Township, Precinct or other Municipality shall ever become subscribers to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation, provided that the adoption or rejection of this article shall not affect in any way the question of the legality or illegality of the donations already made to railroad or private corporations.

Mr. GRAY. Mr. President, I move it reference to the Committee on State, County and Municipal Indebtedness.

The motion was agreed to.

Mr. STEVENSON. I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED; That on the sale of land for delinquent taxes there shall be allowed a redemption at any time within four years from the date of sale.

That no greater sum than twenty per cent per annum as interest or penalty shall be charged on the sum for which lands shall be sold.

Mr. STEVENSON. Mr. President, I move it be referred to the Committee on Revenue and Finance.

The motion was agreed to NEM. CON.

Mr. KILBURN. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows.

RESOLVED; That no county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law and three fifths of the voters of the county, to be ascertained in such manner as shall be provided by the general law, shall have voted in favor of its removal to such point, and no person shall vote on such question who is not a legal voter for State officers and members of the Senate and House of Representatives.

The question of the removal of a county seat shall not be oftener submitted to a vote of the people than once in four years, and at no time except at the general election of the State officers and members of the Legislature. But when an attempt is made to remove a county seat to a point not less than ten miles nearer to the center of a county, then a majority vote only shall be necessary.

Mr. KILBURN. I move it be referred to the Committee on Counties.

The motion was agreed to NEM. CON.

Mr. PARKER. Mr. President, I have a resolution.

Resolution read by the Secretary as follows:

RESOLVED; That in all cases wherein the question submitted is for aid to private corporations and where said aid is to be obtained by the levy of a tax, no voter shall be allowed to vote for or against the proposition so submitted unless he be a taxpayer within the district where the tax is so to be levied, and that an Article or Section thereof be inserted in the fundamental law of this State.

Mr. PHILPOTT. I move that the resolution be referred to the Committee on Miscellaneous Corporations.

The motion was agreed to.

Mr. BALLARD. Mr. President, I have a resolution.

Resolution read by Secretary as follows:

RESOLVED; That there ought to be a provision in the Constitution reserving to the Legislature of the State the right and authority to regulate the rate of tariff on freight and passengers over all Railroads which have received, or shall hereafter receive State, County, Precinct, or Municipal aid in their construction.

Mr. BALLARD. I move that the resolution be referred to the Committee on Railroad Corporations.

The motion was agreed to NEM. CON.

Mr. STEVENSON. Mr. President, I have a resolution.

Resolution read by the Secretary as follows:

WHEREAS; The Board of Immigration caused to be distributed certain pamphlets purporting to be a description of the State of Nebraska, and issued by authority of said Board to the members of the Constitutional Convention of Nebraska, therefore be it

RESOLVED; That the President of this Convention be authorized to request the members thereof not to distribute said pamphlets abroad because of their not being a true representation of the State at large,

Mr. ABBOTT. I move the adoption of the resolution.

Mr. NELIGH. Mr. President, I am certainly in favor of the adoption of the resolution for several reasons. I feel a description of Nebraska ought to contain the truth relative to the State. I am in favor as much as any one, for the advancement of the interests of Nebraska, and I believe I have done my part so far to accomplish that object. I have watched these boards of immigration from the beginning. I am from the northern portion of the State, and I have never yet known a citizen influenced by the Board of Immigration. The Board made this pamphlet as describing several rivers, and names the streams south of the Platte, remarking that they are lined with an abundance of timber; enough for future generations. It then describes the northern portion, and of its streams, and says the Platte, L'Eauqui Court, Loup Fork and several other streams are lined only with a limited amount of timber. It names all completed railroads south of the Platte, and leaves seventy-six miles of completed railroad north of the Platte out. If the Board of Immigration is to do justice to the State and its own duty it will publish to the world all the railroads. It would take but little more paper to name the railroads completed. Then it names the proposed railroads, including all south of the Platte, but mentions not a single one north of that river. I have nothing to say against the publication of the interests of the South Platte, but I believe the entire State should be represented. I hope the resolution will be adopted, and the Board of Immigration made to remember in all future publications, to publish the State entire.

The PRESIDENT. The question is upon the adoption of the resolution.

The motion was agreed to NEM. CON.

Mr. ABBOTT. Mr. President, I move that a copy of this resolution be furnished each member of the State Board of Immigration.

The motion agreed to.

Mr. SHAFF. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows.

RESOLVED; That there be incorporated into the new Constitution a provision making it the duty of the Legislature of this State to cause publication of the laws passed at any session thereof, within one month after the adjournment of such session and allowing three months after the adjournment of such session before such laws shall take effect.

Mr. ABBOTT. I move its reference to the Committee on Legislature.

Motion agreed to.

Mr. GRIGGS. Mr. President, I have a resolution I wish to introduce.

The Secretary read the resolution as follows:

RESOLVED; That the General Assembly shall apportion the State into Representative and Senatorial Districts every two years by dividing the whole number of registered voters in the State by the number of Senators and Representatives in the General Assembly as provided by this Constitution, such apportionment to be made upon the whole number of voters registered next prior to such apportionment.

Mr. GRIGGS. Mr. President, I move that the resolution be referred to the Committee on Legislative Apportionment.

Motion agreed to.

Mr. STEVENSON. Mr. President, I have a resolution I desire to offer.

The Secretary read the resolution as follows:

RESOLVED; That the Governor shall have no power to grant reprieves, commutations and pardons for the offense of treason, or in cases of impeachment after conviction, or when the crime of murder has been proven according to the law and followed by conviction and sentence, unless upon petition signed by three fourths of the jury before whom the case was tried, the presiding Judge and the District Attorney.

Mr. STEVENSON. Mr. President, I move the resolution be referred to Committee on Executive.

Motion agreed to.

Mr. VIFQUAIN. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

Any railroad corporation created or hereafter to be created, and which has or will secure land grants from the Federal Government will be taxed upon the lands so received, and the assessor in the different precincts where such lands may be situated, will assess said lands at the price said lands are offered for sale by said railroad companies; and in case the appraised value of said lands is below the assessed appraised value of real estate in the different precincts where such lands may be situated, said railroad land will be assessed at the same price of other real estate.

Mr. CURTIS. I move its reference to Committee on Revenue and Finance.

Motion agreed to.

Mr. PHILPOTT. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That a Section be inserted, under an appropriate article of the State's Constitution, that the State of Nebraska shall never be made defendant in any court of law or equity.

Mr. PHILPOTT. I move its reference to the Committee on Judiciary.

Motion agreed to.

Mr. ESTABROOK. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That the Judiciary Committee be requested to examine that portion of the article in the Constitution of Nebraska entitled, "Education," which reads as follows: "The principal of all funds or other disposition of lands, or other property granted or entrusted to the State for educational and religious purposes, shall forever be preserved inviolate and **undiminished**"; and report to this Convention whether it is the the duty of the State to restore to the school fund all losses caused by improvident or illegal loans or investments or otherwise, so that such fund shall be preserved undiminished.

Mr. ESTABROOK. I move its adoption.

Motion agreed to.

Mr. McCANN. Mr. President, I wish to submit a resolution.

The Secretary read the resolution as follows:

RESOLVED; That the Secretary of State be, and he is hereby requested to have printed for the use of the members of this Convention the accompanying list of authorities and addresses for and against universal suffrage.

Mr. McCANN. Mr. President, the documents in question consist of an address delivered by Mrs. Elizabeth Cady Stanton before the Judicial Committees of the Legislature of New York in 1867, and the majority report of Judge Bingham, and the minority report of Mr. Butler and Mr. Loughridge, of the Judiciary Committee at Washington. There is but one copy of these reports to be had, and I would like to have the reports, or such portions as may be thought necessary, published for the benefit of the members.

Mr. CAMPBELL. Mr. President, I think it is foolish to waste money printing matter on Woman Suffrage. There is only $15,000 appropriated for printing purposes, and I would like to know what it would cost to have it done before I would vote for the ordering of this printing.

Mr. McCANN. I am not able to say what the cost would be. I move Mr. President, to refer it to the Committee on Suffrage, they can merely collate such as they think would be beneficial to the Convention, and either print all, or no part of it, as they see fit.

The motion was agreed to.

Mr. PHILPOTT. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED; That a Section be inserted in an appropriate Article of the Constitution, that the General Assembly shall have no power to authorize Lotteries or Gift enterprises for any purpose. and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State.

Mr. PHILPOTT. Mr. President, I move it be referred to the Committee on Miscellaneous Subjects.

Referred NEM. CON.

Mr. ROBINSON. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

WHEREAS; Experience shows that the existence of a strong and active minority, tends to keep the administration of Government free from corruption therefore

RESOLVED; That the Committee numbered "Four" be instructed to prepare for the consideration of this Convention, a Section providing for minority representation, analogous to that in force in the State of Illinois.

Mr. CURTIS. Mr. President, I move it be referred to the Committee on Electoral and Representative Reform (No. 4.)

So referred NEM. CON.

Adjournment.

Mr. HASCALL. Mr. President, In order to give members a chance to prepare more resolutions, I move that we take a recess until two o'clock.

The PRESIDENT (pro tem). Will the gentleman withdraw his motion for the present. The President wishes to announce some Committees.

Mr. HASCALL. I will do so, certainly.

The PRESIDENT. (taking the Chair) The Committee on State Lands (No. 18) is composed of three gentlemen, while the rules require it should be composed of seven appointed. I will therefore add to that Committee Messrs. Thomas, Vifquain, Estabrook and Lyon.

Mr. WAKELEY. It seems to me that the most important work for this Convention is Committee work, and therefore move that we now adjourn until to-morrow at 10 o'clock.

The motion was agreed to.

So the Convention (at Eleven o'clock and forty minutes) adjourned.

SEVENTH DAY.

Wednesday, June 21, 1871

The Convention met at ten o'clock a. m. and was called to order by the President.

Prayer.

Prayer was offered by Rev. F. M. Dimick of Omaha, as follows:

Almighty God, our Heavenly Father; Thou who rulest in the heavens and upon the earth and under whose direction all governments and nationalities exist, and under whom we have our national existence, we lift up our hearts in thanksgiving for our preservation. We thank Thee for our nation's prosperity, and pray that Thy blessings may rest upon us at this time. We thank Thee that thou hast planted us here between the two great oceans and pray that Thou wilt make this nation and people an example of justice and right to all the earth. We pray thy blessing upon those assembled here at this time that they may lay such a foundation for the future growth of this state as shall result in the good of all and Thy glory. We pray that Thou wilt preside over all these deliberations and direct to such conclusions as shall bring happiness in all our future days, we ask it for Christ's sake. Amen.

The Secretary called the roll.

Reading of the Journal.

The Journal of the last days proceedings was read and approved.

The Secretary read a communication from the Secretary of State as follows:

Secretary's Department.

Lincoln, Nebraska, June 19, 1871,
To the Honorable President of the Constitutional Convention:

Dear Sir—In answer to a resolution of your Honorable body adopted this day, asking for information in regard to the Population and Assessed Value of all property of the several counties of this State, I have the honor to submit the following report:

Adams	No return
Buffalo	$ 472,386
Burt	1,128,723
Butler	972,765
Cass	3,704,574
Cedar	613,974
Cheyenne	920,394
Colfax	739,419
Cuming	1,211,980
Dakota	653,384
Dixon	303,863
Dodge	1,880,439
Douglas	10,470,161
Gage	1,337,621
Hall	697,171
Hamilton	607,234
Jefferson	1,718,099
Johnson	1,022,193
Lancaster	3,184,036
L'Eau qui Court	219,328
Lincoln	1,064,894

Madison	208,960
Merrick	1,127,133
Nemaha	3,045,785
Otoe	5,000,538
Pawnee	1,049,218
Platte	1,587,240
Pierce	234,890
Polk	464,265
Richardson	2,596,975
Sarpy	1,596,210
Saunders	1,289,689
Saline	1,046,380
Stanton	637,926
Seward	338,551
Washington	1,855,706
Wayne	328,861
Webster	8,999
York	185,694
Aggregate	$55,549,868

Adams	35
Buffalo	194
Burt	2,846
Butler	1,292
Cass	8,116
Cedar	1,033
Cheyenne	365
Colfax	1,426
Clay	54
Cuming	
Dawson	173
Dakota	2,040
Dixon	1,349
Dodge	4,205
Douglas	19,997
Fillmore	238
Gage	3,396
Hall	1,940
Hamilton	130
Jefferson	2,441
Johnson	3,426
Kearney	93
Lancaster	7,074
L'Eau qui Court	234
Lincoln	1,352
Madison	1,136
Merrick	557
Nemaha	7,759
Nuckolls	8
Otoe	12,345
Pawnee	4,180
Platte	1,905
Polk	136
Richardson	9,739
Saline	3,147
Saunders	4,572
Sarpy	2,919
Seward	2,958
Stanton	641
Washington	4,459
York	604
Total in organized counties	120,372
In unorganized territory west of Madison	184
Total (official) except Cuming county	120,556
Cuming county estimated	2,500
Total population of state	123,056

Report of Standing Committees

Mr. ESTABROOK. Mr. President. I have a report from the Committee on Education, School Funds and Lands.

The Secretary read the report as follows:

The Committee on Education, School Funds and Lands, to whom was referred the resolution relative to the location of Agricultural lands, have had the same under consideration and have instructed me to report;

That during the time since the adjournment yesterday until the present hour the Governor's office has been closed and locked, so that the records therein relating to this subject have not been accessible. But they have learned from sources entitled to belief that 90,000 acres of this land, the amount to which the State is entitled, have been selected within the past year by commissioners duly appointed by the Governor under and by virtue of an act of the Legislature giving him the authority, that such selections were all made in the Dacotah Land District and were duly reported to the land office therein, and marked upon the plat. That the entry however, and the investiture of the title in the State were not deemed complete until fees to the amount of $8.00 for each section were paid by the State to the land offices, that the Legislature having adjourned without making an appropriation for these fees these lands were declared by such officers, restored to their former condition, and subject to private entry. That several individuals tempted by the consideration of the increased value of these lands while so with-held from market, have entered a large portion of them within a few weeks, and since the adjournment of the last Legislature.

Your Committee have examined the law applicable to this case and find the land officers are not entitled to fee for these entries and that so far as we are able to discover upon the brief and cursory examination we have been able to give the subject the State has done all required of it to secure to itself the title to these lands. We take the liberty to quote the law of congress concerning fees applicable to this case, to wit: "That from and after the passage of this act, in the location of lands by States and corporations under grants from Congress for railroads and other purposes, (except for Agricultural Colleges,) the registers and receivers of the land offices of the several States and Territories in the districts where such lands may be located, for their services therein, shall be entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, to be paid by the State or corporation making such location, the same to be accounted for in the same manner as fees and commissions on warrants and pre-emption locations,with limitations as to maximums of salary prescribed by existing laws, in accordance with such instructions as shall be given by the commissioners of the general land office." (This act was approved July 1st, 1864.)

We would recommend the passage of the following resolution:

RESOLVED. That the Secretary of the Interior be requested to cancell the private entries of all lands heretofore selected by the State of Nebraska as Agricultural College Lands, and to advise this Convention as to the condition of those lands and the farther steps necessary to be taken to secure the title thereto to the State of Nebraska.

RESOLVED. That the Register and receiver of the Dacotah land district be advised of the law relating to fees applicable to this case, and requested to allow the private entry of no more of the Agricultural lands of this State.

RESOLVED. That the Secretary of this Convention be directed to send immediately a copy of this report to the Secretary of the Interior, and also the same to the Register and Receiver of the Land Office of the Dacotah Land District.

E. ESTABROOK,
Chairman.

Mr. ABBOTT. Mr. President. Those entries have been made this month and the report will not go to the land office until the last of the present month or first of next month. Would it not be better that this go to the Commissioner General of the Land Office?

Mr. HASCALL. I am well satisfied the Committee are mistaken on this point. There is information that these lands were entered prior to the adjournment of the session of the Legislature, because at the adjourned session the attention of members was called to the fact that already a large portion of the lands had been entered by certain persons, and particularly by a member of the prior Legislature.

Mr. WOOLWORTH. I would enquire of my colleague (Mr. Hascall) what member of the Legislature he refers to?

Mr. HASCALL. I would say that my information comes from private parties, but not having the proof that would justify making the charge direct. My information on that subject is as well entitled to credit as the information the Committee have. Both are hearsay, and consequently, unless insisted upon, I would withold the name.

Mr. WOOLWORTH. There is no impropriety in mentioning the name. A general charge goes out that some member of that body has done this thing.

Mr. McCANN. Mr. President. I move to amend the report by substituting the "Commissioner of the General Land Office," instead of "Secretary of the Interior".

Mr. HASCALL. By leave of the Convention, I will make one remark further. The reason I did not choose to mention the name is the fact that the name can be known at the Dakota Land Office, as the names will probably be all published when they are received at that office, and I prefer it should come from there instead of myself.

Mr. WOOLWORTH. The explanation is satisfactory.

The PRESIDENT. The question is upon the amendment.

Mr. McCANN. The Secretary of the Interior being the head of that department it will, of course, be speedily referred to the Commissioner of the General Land Office. I therefore withdraw my amendment.

Mr. WOOLWORTH. I shall renew the amendment of the gentleman from Otoe (Mr. McCann,) for the reason that this communication should be addressed to the Secretary of the Interior. It will take some time for the Secretary to get a letter from one office to another, and why not send it to the office from which this action is required.

Mr. McCANN. I think the object will be sooner attained by adopting the resolution as it stands. This communication, if received by the Commissioner will be referred to the Secretary of the Interior. I hope we will adopt the resolution.

Mr. ABBOTT. I would state that if this communication goes to the Secretary of the Interior it will be on his desk until brought to his attention through the General Land Office. Send it to the land office and if the report is not satisfactory then it will go up to the Secretary of the Interior.

Mr. GRIGGS. The gentleman from Hall (Mr. Abbott) is correct, as far as my experience goes. In our land office I know that letters addressed to the Secretary of the Interior lie for ten or fifteen days and I believe it should first go to the commissioner of the Land Office that it may receive more immediate action.

Mr. ESTABROOK. It is a matter entirely immaterial. I am aware there is considerable circular motion to be gone through to get over all these departments, and we would not have made the report until we had examined the records of the Executive, for there, I presume, will be found the appointment of the commissioners to locate these lands, and this report would not have been submitted only we deemed it necessary to make the utmost expedition to get this matter before the proper authorities; and if it gets there quicker by going to the Commissioner of the

General Land Office, so much the better. It goes to the Secretary of the Interior as the head, and pertains to the land office bureau. I do not think it makes much odds either way; but, if required, I will consent to any amendment.

Mr. ABBOTT. If the gentleman has had much experience in land office matters he will find it does make a good deal of difference. The Secretary of the Interior will take no notice of the thing until the Commissioner of the General Land Office has made a report. I speak from actual knowledge.

Mr. SPRAGUE. As this seems to be a matter of considerable importance to the State, and entitled to belief, I think the Secretary should furnish a copy to both the Secretary of the Interior and the Commissioner and the object thus be obtained.

Mr. WOOLWORTH. I have no objection. It accomplishes the object I have in view. I withdraw my amendment.

The PRESIDENT. My experience is that it takes from thirty to forty days for a communication to get from the Secretary of the Interior to the General Land Office.

Mr. ROBINSON. The facts as stated by the gentleman from Douglas (Mr. Hascall) are true. There were also entries made prior to the meeting of the last Legislature. There will have to be another communication sent, and I move the report be amended so as to strike out that portion of it, and let it read, "that entries were made subsequent to the selection of these lands," so that it will cover all possible cases. The law applies to entries made subsequent to the selection.

Mr. ESTABROOK. I think the object will be accomplished if we send one to each department. It states that some entries were made subsequent to the last Legislature.

The PRESIDENT. Read that part of it, Mr. Secretary.

The Secretary reads "that during the time since the adjournment—"

Mr. HASCALL. Mr. President. I would suggest that the report itself, is not subject to amendment. If the Committee who report these facts are willing to correct the facts, they will be corrected of course.

The PRESIDENT. The Chair will entertain the resolution of any gentleman to correct, whether it is parliamentary or not. The Secretary reads " that several individuals, tempted by the consideration of the increased value of these lands, while so with-held from the market, have entered a large portion of them within a few weeks, and since the adjournment of the last legislature."

Mr. MYERS. I hardly think it worth while to waste so much time in the consideration of the Report, I have full confidence in the ability of that Committee in presenting a true state of facts to this Convention, the facts presented ought to be taken because they are our agents the facts cannot be amended, they can be dissussed. This Convention has certain duties to perform, and it is not a part of our duty to hunt up or punish parties who may have been derilect in the performance of their duties the Governor of the State of Nebraska is the custodial of the lands of the State, and if these trespassers and plotters have seized upon the legacy of the General Government to us there are legal measures to be adopted to oust them at once from their possession of these lands.

The PRESIDENT. Gentlemen, the question is upon the amendment of the gentleman from Saunders (Mr. Sprague) that a copy each be sent to the Commissioner of the Interior and the General Land Office.

The amendment was agreed to.

Mr. ESTABROOK. I would like to inquire whether the report was adopted or is it the amendment that is adopted.

The PRESIDENT. The motion now is upon the adoption of the report as amended.

Motion agreed to.

Resolutions.

Mr. WAKELEY. Mr. President. I present a resolution and ask that it be referred to the Committee on Electoral and Representative Reform.

The Secretary read the resolution as follows:

Article.

RESOLVED. That there be inserted in the Legislative Article, the following provisions:

Sec The state shall be divided into nineteen Senatorial Districts, which shall be composed respectively of contiguous territory and shall be as compact, and as nearly equal in population, as practicable.

Sec. The Senate shall consist of Twenty-four Senators, five of whom shall be chosen from the State at large, and one from each Senatorial District.

Sec. The House of Representatives shall consist of Sixty-six members, nine of whom shall be chosen from the State at large, and 3 from each Senatorial District.

Sec. At any election of Senators from the State at large, or of Representatives, each qualified voter may cast as many votes for one candidate for either office, as there are persons to be elected to that office by the same constituency, or may distribute the same or equal parts thereof, at his option, among the candidates, not exceeding the number to be elected. The candidates highest in votes shall be declared elected, or, if an equal vote for two or more having the requisite number shall require it the choice between them shall be made by lot.

Referred NEM. CON.

Mr. GRIGGS. Mr. President, I offer a resolution and ask that it be referred to the Committee on Legislative.

The Secretary read the resolution as follows:

RESOLVED. That a clause be inserted in the Constitution prohibiting any local or special Legislation.

Referred NEM. CON.

Mr. SCOFIELD. Mr. President, I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Governor of the State be requested to furnish for the use of this Convention, a full statement of all the public lands, other than School Lands, which have been donated to the State of Nebraska by the United States, when such lands were selected, and for what purpose, and under what law, and the disposition of the same.

Mr. CAMPBELL. Mr. President. I would like to add to that "and how much of the State land has been forfeited".

Mr. WOOLWORTH. Mr. President. I would like to know how these lands have been forfeited, for it is suggested that some of them have been forfeited. I would like to have the amendment of the gentleman from Otoe (Mr. Campbell) specify, so that we can understand what we are voting for.

Mr. HASCALL. I wish to say that the selection of our state lands is one thing and the confirmation another, now the fact is that lands have been selected, which could not be confirmed to the state, for the reason that the land is within the railroad limits, where the land is worth $2.50 per acre; now if lands selected, have not been confirmed it stands in the same position as before the selection was made, and the State has no right in them.

Mr. CAMPBELL. Mr. President. I withdraw the amendment.

Mr. THOMAS. I would like to have the resolution read.

The PRESIDENT. As we have no Governor, I would like to have the wording of the resolution changed so that it would read "Acting Governor."

The change is made and the Secretary reads the resolution again.

The PRESIDENT. Gentlemen, the question is upon the passage of the resolution.

Mr. MASON. Mr. President, I offer this amendment:

The Secretary read the amendment as follows:

"And inform the Convention how much land, and the particular tracts which have been selected, the selection of which has not been confirmed by the General Government.

The amendment was agreed to.

The PRESIDENT. The question now is upon the adoption of the resolution as amended.

The resolution was agreed to.

Mr. WILSON. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That neither the General Assembly nor any county, town, or township, school district, or other public corporation shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose or to help support or sustain any school, Academy, Seminary, College, University or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever, nor shall any grant, or donation of land, money, or other personal property, ever be made by the State, or any such public corporation to any church or for and sectarian purpose.

Mr. WILSON. I move the reference of the resolution to the Committee on Public Accounts and Expenditures.

The resolution was so referred.

Mr. VIFQUAIN. I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That any railroad corporation created, or hereafter to be created, and that has or will receive, land grants from the federal government, will, after they have begun to dispose of their lands under their so called pre-emption laws, be taxed upon said pre-emption lands or credits, as upon other notes or credits under the revenue laws.

Mr. VIFQUAIN. Mr. President I move its reference to the Committee on Revenue and Finance.

The resolution was so referred.

Mr. GRENELL. Mr. President. I ask leave to submit a resolution and ask that it be referred to Committee No. 8 (Railroad Corporations.)

The Secretary read the resolution as follows:

RESOLVED. That the rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered and held to be personal property, and shall be liable to execution and sale in the same manner as personal property of individuals and the Legislature shall pass no laws exempting any such property from execution and sale, and every corporation organized, or doing business under the laws, or authority of this state, shall have a public place in this State for the transaction of its business and an agent or agents duly authorized to transact the business of the same at such place.

The resolution was referred to the Committee on Railroad Corporations

Mr. STEWART. Mr. President. I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Secretary of this Convention request the Register of the Land Office at Dacotah, to transmit at once, the name of the parties who have made private entries of the lands selected for the Agricultural College.

Mr. ESTABROOK. I would suggest that this resolution be made a part of the communication already adopted by the Convention.

Mr. ABBOTT. I suggest the resolution be amended by adding the words "also the amount entered by each individual".

Mr. STEWART. I accept the amendment.

Mr. GRIGGS. I move the adoption of the resolution.

The motion was agreed to.

Mr. KILBURN. Mr. President. I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Legislature shall not pass local or special laws in any of the following cases: for—

1. Granting divorces.
2. Laying out, opening, altering and working roads or highways.
3. Vacating roads, townplats, streets, alleys and public grounds.
4. Locating or changing county seats.
5. Regulating county or township affairs.
6. Regulating the practice in Courts of Justice.
7. Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables.
8. Providing for changes of venue in civil and criminal cases.
9. Incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village.
10. Providing for the election of local officers in precincts, counties, towns or cities.
11. Summoning and impaneling grand or petit juries.
12. Providing for the management of common schools.
13. Regulating the interest on money.
14. The opening and conducting of any election, or designating the place of voting.
15. The sale or mortgage of real estate belonging to minors or others under disability.
16. The protection of game or fish.
17. Chartering or licensing ferries or toll bridges.

18. Remitting fines, penalties or forfeitures.

19. Restraining all, or any kind of live stock from running at large.

20. Creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed.

21. Changing the law of descent.

22. Granting to any corporation, association, or individual, the right to lay down railroad tracks, or amending existing charters for such purposes.

23. Granting to any corporation, association or individual any special or exclusive privilege, immunity, or franchise whatever.

24. In all other cases where a general law can be made applicable no special law shall be enacted.

25. The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any municipal corporation therein.

Mr. KILBURN. I move the resolution be referred to the Committee on Judiciary (No. 1).

The motion was agreed to.

Mr. MYERS. Mr. President, I offer the following resolution:

The Secretary read the resolution of Mr. Myers as follows:

RESOLVED. That the Committee on Legislative Department are requested to consider the following as an amendment to the Constitution.

That within five years after the first meeting of the Legislature, and within every subsequent term of ten years, an enumeration of the taxable inhabitants shall be made, in such manner as shall be directed by law. The number of representatives shall at the several periods of making enumeration, be fixed by the Legislature, and apportioned among the several counties according to the number of taxable inhabitants in each, and shall never be less than sixty nor greater than one hundred. Each organized county shall have at least one representative; but no county hereafter organized, shall be entitled to a separate Representative until a sufficient number of taxable inhabitants shall be contained within it, agreeably to the ratio which shall be established.

Mr. MYERS. I ask that that be referred to the Legislative Committee.

Mr. TOWLE. Mr. President. I would ask if that is subject to amendment, whether an amendment would be in order, if so, I move you that we strike out the word taxable wherever it occurs in the resolution.

The PRESIDENT. The Chair would rule that the resolution is not amendable.

Mr. ROBINSON. Mr. President. I would suggest that this resolution is but a request to a Committee, and it must be adopted here and not referred.

The PRESIDENT. I will state to the gentleman that this rule (No. 36) is very broad and says "All propositions presented to the Convention relating to the provisions on frame of the Constitution, shall, in the first instance, be referred to an appropriate Standing Committee without debate except as to the Committee to which the reference shall be made."

Mr. GRENELL. Mr. President. I would understand this resolution to be a proposition "relating to the provisions on frame of the Constitution."

The PRESIDENT. The Chair so understands, and rules that the resolution is not amendable.

Mr. LAKE. Mr. President. I

move the adoption of the following resolution:

The Secretary read the resolution as follows:

RESOLVED. That the Auditor of State be, and he is hereby requested to furnish a statement to this Convention, showing the amount of Commencement fees reported to him under the act of the Legislature approved June 22nd, 1867, and the names of the counties and courts whence the same was returned, and the amounts from each.

The motion was agreed to.

Mr. SCOFIELD. Mr. President. I have a resolution and move its adoption.

The Secretary read the resolution as follows:

RESOLVED. That the Clerk of the Supreme Court be requested to furnish, for the use of this Convention a statement of the number of cases now pending in that court and also the number of cases that have been heard and determined in said court since the State organized, and the counties wherein such actions were originally commenced.

The motion was agreed to.

Mr. PHILPOTT. Mr. President. I have a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Constitution be so amended as to read as follows:

The House of Representatives shall have the sole power of impeachment, but a majority of all the members elected must concur therein. All impeachments shall be tried by the Senate, and when sitting for that purpose the Senators shall be upon oath or affirmation to do justice according to law and the evidence. When the Governor of this State is tried the Chief Justice shall preside; no person shall be convicted without the concurrence of two thirds of the Senators elected, but judgment in such cases, shall not extend further than removal from office or disqualification to hold any office of honor, profit or trust under the government of the State, or both at the discretion of the Senate. The party, whether convicted or acquitted, shall nevertheless be liable to prosecution, trial, judgment and punishment according to law.

Mr. PHILPOTT. I move its reference to the Committee on Judiciary.

The motion was agreed to.

Mr. PHILPOTT. Mr. President, I have a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Constitution be so amended as to contain an article as follows:

The sale, as a beverage, of spirituous, vinous and malt liquors, is forever prohibited in this State. The Legislature of the State is hereby empowered to pass such laws as will secure, and effect the enforcement of this article.

Mr. ROBINSON. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED. That the Judiciary Committee be and are hereby requested to inquire into and report upon the propriety of establishing a Board or Tribunal for the determination of the plea of insanity when the same is interposed in criminal cases, said Board to consist of the superintendent of the Insane Asylum and such other learned physicians as by law shall be added to such Board.

Mr. ROBINSON. I move its reference to the Judiciary Committee.

The motion was agreed to.

Mr. HINMAN. Mr. President, I

have a resolution to offer and move its reference to the Legislative Committee.

The Secretary read the resolution as follows:

RESOLVED. That the Legislature shall provide that no law shall take effect until the same is published throughout the State, either by publication in one newspaper in each county where a newspaper is published, or until the laws are distributed in pamphlet form to each of the organized counties of the State.

The motion was agreed to.

Mr. PARCHEN. I offer a resolution and move its reference to the Committee on Municipal Corporations.

The Secretary read the resolution as follows:

RESOLVED. That a section may be inserted in the Constitution as to empower the municipal authorities of every incorporated town to regulate their affairs in regard of keeping Sabbath commonly called Sunday.

The motion was agreed to NEM. CON.

Mr. THOMAS. Mr. President, I desire to offer a resolution.

Resolution read by the Secretary as follows:

RESOLVED. That the Committee on Judiciary be instructed to inquire into the expediency of incorporating in the Constitution a clause to the effect following, to wit:

The Legislature at its first session after the adoption of the Constitution shall provide for the appointment of these [three] Commissioners whose duty it shall be to inquire into, revise and simplify the rules of practice, pleadings, forms and proceedings and arrange a system adapted to the Courts of Record of this State and report the same to the Legislature subject to their modification and adoption; and such Commission shall terminate upon the rendering of the report unless otherwise provided by law.

Mr. THOMAS. Mr. President, I move its reference to the Judicial Committee.

The motion was agreed to.

A communication from the Secretary of State was presented and read by the Secretary as follows:

Office of Sec'y. of State,
Lincoln, Neb., June 21st, 1871.

The Honorable, the President of the Constitutional Convention,

Sir:

In answer to a resolution of your honorable body on the 20th inst. I have the honor to report that I am unable to find any contracts or awards of the State printing in the file of any office. I find however, that the persons named below have filed bonds to perform the labor and furnish the material mentioned in the printed list which is attached hereto and made a part of my reply.

Wesley Montgomery,.. Class No. 1
Mills & Co., Class No............2
E. P. Rolf, Class No............3
C. E. Redfield, Class No...........4
E. P. Rolf, Class No............5
E. P. Rolf, Class No............6

CLASSIFICATION NO. 1.

Bills and Resolutions in Bill Form.

———ems composition, small pica type, per 1000.

———quires flat cap, 14 lbs to ream.

———quires of 24 impressions press work.

———ems composition, pica, yea and nay lists.

———quires flat cap, cut for yea and nay lists.

———quires of 24 impressions each, of press work.

CLASS NO. 2.

Senate and House Journals, Governor's Messages, Officers' Reports in the Journals—Super Royal Octavo Form.

———ems long primer composition.

———quires paper 41 lbs to ream.

———quires presswork (24 impressions.)

CLASS NO. 3.

Reports, Communications and Pamphlet Documents separate from Journals,—Octavo.

———ems long primer composition.

———quires of paper 40 lbs to ream.

———quires, 24 imp. press work.

CLASS NO. 4.

General and Local Laws, Joint Resolutions, Memorials, in one super royal octavo volume.

———ems long primer composition.

———quires super royal, 40 lbs paper.

———quires, 24 imp. press work.

CLASS NO. 5.

Letter Heads, Blanks and Circulars.

———ems of composition, brevier measurement, for letter heads, circulars and all ruled blanks.

———quires ½ sheet letter 12 lbs to ream.

———quires full sheet letter 12 lbs to ream.

———quires press work on letter heads.

———flat letter, 10 lbs to ream, for blanks.

———press work on letter blanks.

———quires flat cap, 14x17, 14lbs.

———quires flat cap, press work.

———quires folio post, 17x22, 16lbs.

———quires of press work.

———quires note 8x10, 5 lbs.

———quires press work.

———quires red and blue ruling in one direction.

———quires red and blue ruling in two directions.

Note.—In all the above classes rule work, or figure work in columns without rules will be measured one and a half times for composition; and rule and figure work twice.

CLASS NO. 6.

Folding and stitching bills and resolutions, and folding and stitching of pamphlet documents, and covers.

———sheets of flat cap one fold, per 100 sheets.

———sheets of flat cap, stitched per 100 sheets.

———paper covers for octavo pamphlets, including composition, paper and press work, per 100 covers.

———covers put on such pamphlets, per 100 covers,

———sheets folded octavo (four times) per 100 sheets.

CLASS NO. 7.

Folding, stitching, covers and binding for Laws and Journals.

———sheets folded octavo, per 100 sheets

———paper covers for Laws and Journals, inclusive of papers composition and press work, 100 covers.

———copies binding of Laws and Journals in paper covers including stitching, per 100 copies.

———copies, binding of Laws and Journals, in law sheep, including material, stitching and lettering.

I am very respectfully your obedient servant.

WM. JAMES,
Secretary of State.

Mr. LAKE. The Judicial Committee have a resolution from this body to act upon, and are waiting for information to be derived from this report, or communication. I move its reference to the Judicial Committee.

The motion was agreed to NEM. CON.

Mr. WEAVER. I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED. That the Judiciary Committee be requested to inquire into the expediency of permitting criminals to testify in their own behalf.

Mr. WEAVER. Mr. President, I move its reference to the Judiciary Committee.

The motion was agreed to.

Mr. GRENELL. Mr. President, I have a resolution.

Resolution read by the Secretary as follows:

RESOLVED. That the Committee on the Legislative department be instructed to inquire into the expediency of so changing the present Constitution.

1. That the Legislature shall meet annually for the transaction of business.

2. The pay of the members of the Legislature shall be a salary for the term for which they are elected and mileage.

3. That the sum of ———dollars be allowed each member for stationery, postage, newspapers and all other allowances.

Mr. ABBOTT. I call for the rereading of the resolution.

The Secretary re-read the resolution.

Mr. GRENELL. I move that the resolution be referred to the Legislative Committee.

The motion was agreed to.

Question of Privilege.

Mr. KIRKPATRICK. I rise to a question of privilege. On Monday a resolution was adopted by this body requesting certain information from the Auditor relating to the indebtedness of the State, bonded or otherwise; and also requesting him to furnish a tabular statement of the receipts and expenditures of the state, and other information. I would enquire if you have received any response to that resolution.

The PRESIDENT. The Secretary tells me he informed the Auditor, but no response has yet been received.

Mr. GRENELL. I was in the Auditor's office this morning, and they were at work on the report. They informed me it would soon be ready.

Motion to Adjourn.

Mr. GRIGGS. I move this Convention adjourn until to-morrow morning.

The PRESIDENT. Will the gentleman from Gage (Mr. Griggs) postpone his motion for a minute or two. I have a

Mr. GRIGGS. I will.

Bill for Clerk's Services.

The PRESIDENT. Gentlemen, here is a bill, approved by the Chairman of a Committee for work done by a clerk, and brought to me for approval. I see by referring to section 7 of the act by which we are called "That the amount due each person shall be certified by the President of the Convention to the Auditor of State, who shall issue warrants upon the Treasurer of the State, and the same shall be paid by the Treasurer as other warrants are paid."

Mr. LAKE. What Committee is it from?

Mr. McCANN. The Committee on Rules. The rules were lengthy; and a copy was first made in full, then altered and amended. A second copy was made for the use of the President, and a third for the use of the printer. There was a good deal of writing to be done, and in a short space of time, and it was necessary it should be done in a legible and neat manner. The Committee employed a clerk or copyist to copy these rules, at the time the clerk was performing this duty it was my impression it would be the duty of the President of this Convention to certify to the work, and the warrant would be drawn by the Auditor. I believe no action of the Convention is required, but I will move that the Convention be required to audit the account.

Motion agreed to NEM. CON.

Resolutions Again.

Mr. PHILPOTT. Mr. President. I have a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Judiciary Committee be allowed and empowered to consider on oath or affidavit of responsible parties of information imparted to it relative to the contracts now existing between the State and parties for State printing, which may now be reported to this Convention by the Secretary of State.

The PRESIDENT. Gentlemen, the question is upon the passage of the resolution.

Mr. MYERS. I trust the resolution will not be adopted. I doubt the propriety of sending for persons and especially affidavits. I do not think the subject of that gravity and necessity that we should resort to legislative stratagems for the accomplishment of the object of these parties, which is already understood. We have already a communication from the Acting Governor. To undermine any of that official statement, to go behind it by affidavit, is certainly an unusual practice. I think this thing has been hunted up far enough, with the information we have from the proper department to enable this Convention to view the matter understandingly, without going to the cost of procuring persons or affidavits. This is a Convention, not a Legislature, and why go to these extraordinary outside means to accomplish a purpose so well understood.

Mr. PHILPOTT. I think the gentleman from Douglas (Mr. Myers) misunderstands the object of the resolution. I am of the opinion this has not gone far enough yet. The object of the resolution introduced a few days ago was for the purest motive. The object of this resolution is based upon the report of the Secretary of State. I am informed, on reliable authority, by a gentleman whose word may be believed. that certain contracts have been made, and that they cannot now be found. I do not make any charges, it may be they are mislayed; but because the Secretary of State cannot find them does not follow that the contracts do not exist. The resolution is that the Judiciary Committee may be allowed to consider such information as to the contracts made as can be found;

and there are competent persons willing to testify that certain contracts have been made, both of which cannot be found. I do think the Judiciary Committee should be allowed to take that into consideration, in order to enable them to arrive at the facts of the case. I want that Committee should report intelligibly. In order to do so they ought to have all the reliable information which it is possible to have; and the gentleman ought not to oppose any scheme which will accomplish this object.

Mr. KIRKPATRICK. I desire to offer an amendment to the resolution, to strike out the word "affidavit."

Mr. PHILPOTT. I will accept it if the gentleman will substitute the word " affirmation."

Mr. TOWLE. Mr. President, while it may be possible, and more than possible, it may be extremely probable, that there have been many causes, and there exists much reason why an investigation should be instituted in relation to certain departments of this State, still, in my view of this matter, we are elected for a certain specific purpose; and we are not elected for the purpose of forming and resolving ourselves into an indefinite series of investigating Committees. If we commence this ball, if we first introduce the wedge, where will we stop, and to what extent will we find ourselves traveling? There will be an investigation as to the individuals who recently escaped from the penitentiary; as to the lands sold; and the contracts for the building in which we now stand. The investigation will be lengthy, queries and resolutions will be innumerable, and the appropriation and time for us will be thrown away. Those individuals who have given these bonds, simply made their bids to do the work at certain specified rates, and those bids are all filed, and a portion of the records and thereupon, when those bids were accepted, the parties were required and did enter into a bond with the State to do their work as provided in the bids. It appears to me there can be no corruption in that case. There is no necessity of investigation here, and there is no propriety either. The only question for us is, shall we obtain the printing necessary for this Convention. We have so far obtained it, and it has been provided in the shortest time.

Mr. MANDERSON. Mr. President, I shall oppose the adoption of the resolution of the gentleman from Lancaster (Mr. Philpott) even if the resolution asking for this information came from the Judiciary Committee. The former resolution was that the Secretary of State, and the Auditor of State each be requested to make a report as to the contracts for public printing already made. We have received a report from the Secretary of State only, and we have yet to receive, I take it, a report from the Auditor. It may be that official has the information which we desire, it may be that in his office is the information we wish. But I oppose it further, Mr. President, I think it is establishing a bad precedent, we cannot do as the resolution proposes, without turning our committee rooms into courts of investigation. I think it is entirely unnecessary that we should take any such action in this case.

Mr. MASON. The question is

whether there be now in existence a contract for the performance of this printing. If there be such contract, then the State is bound by it. It seems there has been a statement furnished us from the Secretary's office. He reports that Mr. A has the printing for No. 5. Mr. B for No. 3. Mr. C. for No. one, etc. Now Mr. President, it may be that No. 5 covers the incidental printing, and that No. 3 covers the printing of the Journal. It may be necessary for the Committee to inquire what these respective numbers mean. I suppose this could be determined by the oath of the parties to whom contracts were let. I do not deem it of any great consequence, further than to determine the question as to whether there now exists a contract between this State and some person to do this printing. If there be such contracts, then that person is entitled to the work. If this Convention refuse to award the work to him, he would have the right to collect damages. I don't know that it is necessary for this Committee to swear a witness.

Mr. KIRKPATRICK. I wish to know if my amendment was accepted.

The PRESIDENT. It was.

The question being upon the resolution of Mr. Philpott, the Convention divided, and the motion was not agreed to.

Mr. MASON. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED. That the Committee on Municipal Corporations be instructed to inquire into and report as to the expediency of putting the following into the Constitution, to wit:

1. All Cities, Villages and other Municipal Corporations, shall be incorporated by general law, and shall have no other powers than such as are provided by law.

2. The valuation of all property, whether real, personal, or mixed, for taxation or assessment shall not exceed that made by the State for purposes of taxation.

3. The percentage for taxation and assessment shall be limited, and neither shall be levied only upon property benefited, and for special assessment only in proportion, and to the amount of the benefit derived by the improvement for which the assessment was made.

Referred to the Committee on Municipal Corporations NEM. CON.

Mr. ROBINSON. Mr. President, I have a resolution.

The Secretary read the resolution as follows:

RESOLVED. That Committee No. 27 be instructed to report the expediency of incorporating into the Constitution, a section providing for the election of a State Printer, and defining his powers.

Mr. ROBINSON. Mr. President, I move its reference to Committee No. 27 (Committee on Printing and Binding.)

Motion agreed to.

Mr. BOYD. I wish to offer a resolution, Mr. President.

The Secretary reads the resolution as follows:

RESOLVED. That Committee No. 9, on Miscellaneous Corporations, be instructed to inquire into the expediency of inserting in the proposed Constitution a clause "that the general assembly shall provide by law, that in all elections for directors or managers of incorporated companies, every stock holder shall have the right to vote in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors, multiplied by the number of his shares of stock, shall equal; or to distribute them, upon the same principle, among as many candidates as he shall think fit and such directors, or managers, shall not be elected in any other manner.

Referred to Committee No. 9, (Miscellaneous Corporations) NEM. CON.

Mr. PARCHEN. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED. That a section may be inserted in the Constitution as to empower the Municipal Authorities of any incorporated town to regulate their affairs in regard to keeping Sabbath, commonly called Sunday.

Mr. PARCHEN. I move the resolution be referred to Committee No. 23 (Penitentiaries and Reformatory Institutions).

The resolution was so referred NEM. CON.

Adjournment.

Mr. GRIGGS. Mr. President. I move we adjourn until to-morrow morning, at ten o'clock.

The PRESIDENT. The motion to adjourn is in order, but here are two communications from the Auditor, which I would like to have the Secretary read.

Mr. GRIGGS. I withold the motion for the present.

The Secretary read the communication from the Auditor, as follows:

Auditor's Office.

Lincoln, June 21, 1871.

Hon. S. A. Strickland, President Constitutional Convention:

Sir:—In response to resolution of Constitutional Convention of 20th inst. with request for statements of School Lands sold, etc., I have the honor to report the following to the several questions asked:

First, whole amount of school lands sold, 86,840.

Second, Average price per acre, $9.09.

Third, No. of acres sold in each county as follows:

1867-68	Acres	Av. price
Saunders	640	$ 8.63
Lancaster	1,345	28.82
Otoe	5,667	10.33
Nemaha	3,723	7.60
Pawnee	1,030	9.00
Dodge	2,551	9.60
Cedar	325	7.50
Dakota	270	7.00
Saline	89	9.40
Washington	3,470	10.00
Sarpy	866	7.40
Douglas	1,938	9.87

Total sales in 1867 and 1868, 21,944 acres, average price $10.53.

1869-70	Acres	Av. price
Saline	949	$ 8.38
Cass	11,571	8.96
Gage	1,791	7.70
Colfax	650	9.73
Sarpy	440	7.00
Washington	2,430	7.66
Richardson	5,580	8.25
Dixon	370	7.00
Douglas	3,920	12.15
Lancaster	12,170	7.80
Dodge	4,060	7.34
Seward	3,440	7.07
Nemaha	3,898	7.88
Butler	10	25.00
Stanton	450	7.82
Johnson	2,054	7.20
Hall	640	16.30
Pawnee	1,980	7.04
Otoe	8,493	8.47

Total acres sold 1869 and 1870, 64,905; general average $8.48.

Fourth question, The amount of school lands taken under the homestead and pre-emption laws—the amount selected in lieu thereof—will answer by quotation from the second annual report of the commissioner of public schools, session of 1860-'61, by Hon. W. E. Harvey:

"In accordance with the act to provide for the selection of lands in lieu of sections 16 and 36, in cases where part of sections thereof, have been sold, approved January 13, 1860, I have selected in the Dakota land district.

In lieu of lands entered	3,659.60 acres
To supply sectional township	849.40 acres
Total acres selected	4,509.00

South Platte Land District.

In lieu of land entries	3,084.60 acres
For sectional township	800.00 acres
Total acres selected	3,884.60

.. ..Nemaha Land District... ..

In lieu of lands entered	960 acres
For sectional township	480 acres
Total acres selected	1,440
Grand total of acres selected	9,833.60

The confirmation of the foregoing selections have never been reported by the department at Washington, and consequently the title has never passed to the State.

Question sixth, relative to the actual amount of common school lands of the State, I will state that it cannot be definitely ascertained, as the survey of the State has not been completed, and the area of the State not known in this department.

Seventh question, "How much has been raised annually by direct taxation for common schools, etc?" There has been levied annually two (2) mills upon the assessed valuation of the taxable property of the State for common schools.

Eighth question, the amount accruing to the school fund from school land sold and leased.

Interest to Jan. 1, 1869,	$ 6,659 37
Interest to Jan. 1, 1871,	100,174 24
Amount rec. from	$106,835.61
lease of school lands,	5,197.68
Total	$112,032.29

Respectfully submitted,

JOHN GILLESPIE,

State Auditor.

I move that 200 copies of the report from the Auditor be printed for the use of the members.

Motion agreed to.

The Secretary then read the following second communication from the Auditor.

Auditor's Office,

Lincoln, Neb., June 21, 1871

Hon. S. A. Strickland, President of Constitutional Convention.

Sir:—In response to a resolution of 20th inst, from your honorable body, asking for "a statement showing the various amounts that have been appropriated or expended upon the Capitol Building and Grounds" I have the honor to report as follows:

Cost of Capitol Bld'g....	$97,873.68
Cost fencing Capitol gd's	2,535.00
Cost grading Capitol gd's	3.256.27
Cost trees Capitol gd's...	2,082.10
Total............	$105,767.05

Respectfully submitted,

JOHN GILLESPIE,

State Auditor.

Mr. ABBOTT. Mr. President. I move the report be referred to the Committee on Public Buildings.

Motion agreed to.

Mr. ABBOTT. Mr. President. I now move that we adjourn until tomorrow morning at ten o'clock.

Motion agreed to.

So the Convention (at twelve o'clock and five minutes) adjourned.

EIGHTH DAY.

Thursday, June 22, 1871

The Convention met at ten o'clock a. m. and was called to order by the President.

Prayer.

Prayer was offered by Rev. L. B. Fifield of Lincoln as follows:

Our Father, thanks be unto Thee for thy mercies and glory forever. Oh, Thou who art the eternal wisdom show us into Thy own truth, teach us that we may control our hearts; deliver us from evil; bless the steps of our path we pray, and lead us out from the wilderness into Thy light. Amen.

Reading of the Journal.

The Secretary read the Journal of the last days proceedings.

The Secretary read the following communication from Hon. John Gillespie, State Auditor.

TABULAR STATEMENT EXHIBITIN

Taxes Levied and Collected, Number of Mills on the Dollar Valuation, Appropriatic

	VALUATION					AMOUNT OF TAXES LEVIED										
						GENERAL	SINKING	SCHOOL	GENERAL	SINKING	SCHOOL	GENERAL	SINKING	SCHOOL	UNIVERSITY	GENERA
	1867	1868	1869	1870	1871	1867	1867	1867	1868	1868	1868	1869	1869	1869	1869	1870
*Adams			850 90	89,876 00								1 70	85	85	85	224
Buffalo	22,520	635,341	908,639 03	792,129 40	472,386	45 04	22 52	33 78	1,270 68	635 34	953 01	1,817 27	908 63	1,362 94	908 63	1,980
Burt	385,110	815,548	838,788 00	1,103,949 00	1,128,723	962 77	577 66	770 22	1,631 09	815 54	1,223 32	1,677 57	838 78	1,258 18	838 78	2,759
Butler		112,777	863,996 00	1,540,526 00	972,765				225 55	112 77	169 12	1,727 99	863 99	1,295 98	863 99	3,851
Cass	1,729,052	1,896,432	2,136,835 00	3,099,856 00	3,704,574	4,322 63	3,458 10	3,458 10	3,792 86	1,896 43	2,844 43	4,273 67	2,136 83	3,205 25	2,163 83	7,749
Cedar	83,620	117,097	183,645 00	328,906 00	613,974	209 05	125 43	167 24	234 09	117 09	175 64	367 29	183 64	275 46	183 64	822
*Cheyenne					920,394											
Colfax			613,615 00	723,409 15	739,419							1,227 23	613 61	920 41	613 61	1,808
Cuming	83,858	472,028	487,909 00	1,020,352 00	1,211,980	209 64	125 78	167 71	944 05	472 02	708 04	975 81	487 90	731 86	487 90	2,550
Dakota	330,682	380 917	393,445 00	610,730 00	653,384	661 36	496 02	661 36	952 29	571 37	761 37	983 61	393 44	786 89	393 44	1,526
Dixon	71,251	123,655	168,209 00	266,720 55	303,863	178 12	142 50	142 50	309 13	185 48	247 31	420 52	168 20	236 41	168 20	666
Dodge	1,292,306	1,424,307	1,729,663 00	2,910,953 00	1,880,439	1,938 46	1,292 30	1,938 46	2.136 46	1,068 23	1,424 30	3,459 32	1,297 24	1,729 66	1,729 66	5,821
Douglas	5,911,259	8,066,779	9,811,488 00	13,541,707 00	10,470,161	14,778 14	8,866 88	11,822 51	12,100 16	6,050 08	8,066 79	14,717 23	7,358 61	9,811 48	9,811 48	27,083
Gage	149,119	662,806	861,208 00	1,227,266 83	1,337,621	372 79	298 24	298 21	1,325 61	662 80	994 20	1,722 41	861 20	861 20	861 20	2,454
Hall	144,793	645 971	902,498 60	857,405 57	697,171	361 97	289 58	289 58	1,291 94	645 97	968 95	1,804 99	902 49	902 49	902 49	2,143
*Hamilton			177,308 50	533,164 13	607,234							354 61	177 30	177 30	177 30	1,332
Jefferson	62,965	66,429	134,913 00	723,193 00	1,718,099	125 93	94 44	125 93	166 07	99 63	532 85	269 82	134 91	202 36	134 91	1,807
Johnson	235,421	564,393	738,975 00	957,419 00	1,022,193	470 88	353 16	470 88	1,412 98	846 58	1,128 78	1,447 95	738 97	1,108 45	738 97	2,393
Lancaster	202,647	466,425	973,309 00	1,529,099 35	3,184,036	506 61	405 30	405 30	1,166 06	699 63	932 85	1,946 61	973 30	973 30	973 30	3,822
L'Eau-qui-Court		33,024	62,915 00	78,572 50	219,328				82 56	49 53	66 04	125 83	62 91	62 91	62 91	196
Lincoln		4,130,714	4,084,941 00	2,061,569 20	1,064,894				10,326 78	6,196 07	8,261 42	8,169 88	4,084 94	4,084 94	4,084 94	5,153
Madison	15,733	27,910	48,818 00	143,236 60	208,960	31 46	23 59	31 46	55 82	27 91	41 86	97 63	48 81	73 22	48 81	358
Merrick	474,965	766,974	570,714 00	1,037,841 48	1,127,133	711 72	747 48	747 48	1,917 43	1,150 46	1,533 94	1,141 42	570 71	570 71	570 71	2,594
Nemaha	1,691,890	1,881,343	2,637,904 00	2,778,208 00	3,045,785	4,229 72	3,383 78	3,383 78	4.703 37	1,881 34	2,822 02	5,275 80	2,637 90	3,956 85	2,637 90	6,945
Otoe	2,692,237	3,191,200	4,261,084 33	4,834,389 78	5,000,538	6,730 59	5,384 47	5,384 47	7,978 00	3,191 20	4,786 80	6,391 62	3,195 81	3,195 81	4,261 08	9,668
Pawnee	430,744	799,862	846,632 00	1,161,258 00	1,047,218	1,076 93	646 16	861 54	1,599 72	799 86	1,199 79	1,635 26	817 63	1,226 44	817 63	2,903
Platte	414,345	1,141,863	914,575 00	1,159,478 95	1,587,240	1,035 86	428 69	428 69	2,283 67	1,141 83	1,713 75	1,829 15	914 57	914 57	914 57	2,898
*Pierce				21,960 00	234,890											54
*Polk					464,265											
Richardson	1,444 880	1,577,007	2,195,125 00	2,552,368 00	2,596,975	3,612 20	2,889 76	2,889 76	3,942 51	1,557 00	2,365 51	4,390 25	2,195 12	3,292 68	2,195 12	6,380
Sarpy	1,117.663	1,104,604	1,445,095 00	1,443,309 00	1,596,210	2,794 15	1,676 49	2,235 32	2,209 20	1,104 60	1,656 90	2,890 19	1,445 09	1,445 09	1,445 09	3,608
Saunders	111,355	180,411	603,913 00	958,640 38	1,279,689	278 34	167 03	222 71	451 02	270 61	360 82	1,207 82	603 91	603 91	603 91	1,917
Saline		105,404	231,814 00	487,845 00	1,046,380				210 80	105 40	158 10	463 62	231 81	347 72	231 81	1,219
Stanton	14,563	138,834	252,073 00	447,723 00	637,926	36 40	21 84	29 12	277 66	138 83	208 25	504 14	252 07	252 07	252 07	1,119
Seward	61,967	124,906	197,005 00	262,960 73	338,551	154 91	92 95	123 93	312 26	187 35	249 81	394 01	197 00	197 00	197 00	657
Washington	879,347	968,327	1,833,568 00	2,059,837 00	1,855,706	2,198 36	1,319 02	1,758 69	1,938 65	968 32	1,452 49	3,667 13	1,575 15	1,833 56	833 56	5,149
*Wayne				219,984 00	328,861											549
*Webster					8,999											
York	14,930	9,256	12,124 00	143,985 22	185,694	29 86	22 39	29 86	23 14	13 88	18 51	24 21	12 12	12 12	12 12	359
*LATELY ORGANIZED	$20,115,252	$32,632,550	$42,094,595 55	$53,709,829 35	$55,512,658							$77,433 59	$37,675 28	$47,610 07	$42,094 41	$122,537

APPROPRIATIONS ANI

Total Amount Appropriations 1867 and 1868 .... $113,289.93
" " " 1869 and 1870 .... 214,956.56
" " " 1871 and 1872 .... 358,076.26

Expenditures Authorized by Statute—Estimated

State Convicts, Fees, etc	$ 4,000.00
Wolf and Wild Cat Bounties	3,000.00
Gopher Bounties	2,000.00
Insane Expenses, Fees, Etc	10,000.00

Fu
Ex
Re

G THE ASSESSED VALUATION,

ns and Expenditures for the Several Years of 1867, 1868, 1869, 1870, 1871:

				AMOUNT OF TAXES COLLECTED							AMOUNT LEVIED, IN MILLS, ON THE DOLLAR VALUATION OF ASSESSMENT													
L	SINKING	SCHOOL	UNIVERSITY	GENERAL	SINKING	SCHOOL	GENERAL	SINKING	SCHOOL	UNIVERSITY	GEN.	SINK.	SCH'L	GEN.	SINK.	SCH'L	GEN.	SINK.	SCH'L	UN'Y	GEN.	SINK.	SCH'L	UN'Y
	1870	1870	1870	Nov. 30, 1868	Nov 30, 1868	Nov. 30, 1868	Nov. 30, 1870	Nov. 30, 1870	Nov. 30, 1870	Nov. 30, 1870	1867	1867	1867	1868	1868	1868	1869	1869	1869	1869	1870	1870	1870	1870
69	44 93	179 75	89 87	......	......	......	11 33	6 66	8 64	68	......	......	......	......	......	......	2	1	1	1	2½	½	2	1
32	396 06	1,584 25	792 12	42 34	21 19	......	36 34	18 45	29 69	6 69	2	1	½	2	1	1½	2	1	1½	1	2½	½	2	1
87	551 97	2,207 89	1,103 94	1,589 22	951 77	......	2,864 97	1,475 64	2,452 12	697 48	2½	1½	2	2	1	1½	2	1	1½	1	2½	½	2	1
31	770 26	3,081 05	1,640 52	......	......	......	1,070 18	535 09	802 75	635 09	......	......	......	2	1	1½	2	1	1½	1	2½	½	2	1
64	1,549. 92	6,199 71	3,099 85	8,544 07	5,022 71	......	6,815 62	3,347 06	4,868 34	1,688 21	2½	2	2	2	1	1½	2	1	1½	1	2½	½	2	1
26	164 45	657 81	328 90	159 08	95 29	......	726 49	385 21	378 92	130 00	2½	1½	2	2	1	1½	2	1	1½	1	2½	½	2	1
...	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......
52	361 70	1,446 81	723 40	......	......	......	1,184 05	599 00	898 95	268 03	......	......	......	......	......	......	2	1	1½	1	2½	½	2	1
88	510 17	2,040 70	1,020 35	......	......	......	1,745 30	917 24	1,341 06	476 98	2½	1½	2	2	1	1½	2	1	1½	1	......	......	......	......
82	305 36	1,221 46	610 73	1,508 06	1,036 59	......	2,382 70	1,031 68	2,105 20	452 00	2	1½	2	2½	1½	2	2½	1	2	1	2½	½	2	1
80	133 36	533 44	266 72	169 85	100 31	......	494 54	259 17	547 92	89 68	2½	2	2	2½	1½	2	2½	1	2	1	2½	½	2	1
90	1,435 47	5,821 90	2,910 95	2,553 52	1,665 50	......	4,621 68	1,858 17	2,591 19	1,194 45	1½	1	1½	1½	¾	1	2	¾	1	1	2½	½	2	1
41	6,770 85	27,083 41	13,541 70	24,503 63	14,956 28	......	24,721 28	12,365 66	16,503 36	8,000 27	2½	1½	2	1½	¾	1	1½	¾	1	1	2½	½	2	1
53	613 63	2,454 53	1,227 26	830 77	563 79	......	2,895 64	1,488 68	1,823 21	818 49	2½	2	2	2	1	1½	2	1	1	1	2	½	2	1
51	428 70	1,714 81	857 40	316 47	252 30	......	1,537 18	768 92	1,063 78	174 08	2½	2	2	2	1	1½	2	1	1	1	2½	½	2	1
91	266 58	1,066 32	533 16	......	......	......	88	85	62	......	......	......	......	......	......	......	2	1	1	1	2½	½	2	1
98	361 59	1,446 38	723 19	114 48	47 02	......	562 82	342 01	340 00	134 91	2	1½	2	2½	1½	2	2	1	1½	1	2½	½	2	1
54	478 70	1,914 83	957 41	409 77	227 37	......	2,553 91	1,446 45	2,106 11	564 57	2	½	2	2½	1½	2	2	1	1½	1	2½	½	2	1
74	764 54	3,058 19	1,529 09	803 53	565 02	......	1,384 58	704 60	97 54	684 71	2½	2	2	2½	1½	2	2	1	1	1	2½	½	2	1
43	39 28	457 14	78 57	......	......	......	181 39	97 11	113 02	53 41	......	......	......	2½	1½	2	2	1	1	1	2½	½	2	1
92	1,030 78	4,123 13	2,061 56	......	......	......	......	......	......	......	......	......	......	2½	1½	2	2	1	1	1	2½	¼	2	1
9	71 61	286 47	143 23	......	......	......	151 91	75 64	71 09	45 46	2	1½	2	2	1	1½	2	1	1½	1	2½	½	2	1
0	518 92	2,075 68	1,037 84	41 76	27 51	......	2,019 18	1,203 20	1,581 80	49 33	1½	1	1	2½	1½	2	2	1	1	1	2½	½	2	1
2	1,389 10	5,556 41	2,778 20	10,913 11	5,730 92	......	9,195 57	4,366 16	6,284 46	2,091 60	2½	2	2	2½	1½	2	2	1	1½	1	2½	½	2	1
7	2,417 19	9,668 77	4,834 38	7,551 43	5,576 98	......	11,697 44	5,248 78	5,688 74	2,696 85	2½	2	2	2½	1½	2	1½	¾	¾	1	2½	½	2	1
4	580 62	2,322 51	1,161 25	869 74	520 47	......	4,534 66	2,156 37	1,197 31	8,988 13	2½	1½	2	2	1	1½	2	1	1½	1	2½	½	2	1
9	579 73	2,318 95	1,159 47	2,299 77	1,591 66	......	2,308 95	1,184 84	1,523 94	427 95	2½	2	2	2	1	1½	2	1	1	1	2½	½	2	1
0	10 98	43 92	21 96	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	2½	½	2	1
..	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......
2	1,276 18	5,104 73	2,552 36	4,176 43	3,068 61	......	8,110 04	3,848 58	7,404 47	1,655 51	2½	2	2	2½	1½	2	2	1	1½	1	2½	½	2	1
7	721 65	2,886 61	1,443 30	3,506 69	2,111 17	......	2,291 85	1,197 13	2,806 42	429 49	2½	1½	2	2	1	1½	2	1	1	1	2½	½	2	1
8	479 32	1,917 28	958 64	254 64	142 34	......	1,694 58	911 49	1,028 38	583 94	2	1½	2	2½	1½	2	2	1	1	1	2	½	2	1
2	243 92	975 69	487 84	......	......	......	431 76	216 19	336 81	208 69	......	......	......	2	1	1½	2	1	1½	1	2½	½	2	1
0	223 85	895 44	447 72	65 65	40 29	......	279 40	162 93	231 33	33 16	2	1½	2	2	1	1½	2	1	1	1	2½	½	2	1
0	131 48	525 92	262 96	269 62	161 26	......	880 38	1,668 75	211 21	146 90	2½	1½	2	2½	1½	2	2	1	1	1	2½	½	2	1
9	1,029 91	4,119 67	2,059 83	4,029 37	418 01	......	4,874 20	2,119 35	2,975 98	1,349 79	2½	1½	2	2	1	1½	2	¾	1	1	2½	½	2	1
6	109 99	439 96	219 98	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	2½	½	2	1
..	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......
6	71 99	287 97	143 98	13 14	8 38	......	38 41	22 08	27 78	7 60	2	1½	2	2½	1½	2	2	1	1	1	......	......	......	......
9	$26,854 75	$107,419 49	$53,709 65	$75,282 16	......	......	$115,497 83	$52,275 22	$70,842 94	$26,493 13														

EXPENDITURES

Estimate Continued

itives from Justice	$ 2,000.00
enses Sale School Land	10,000.00
enue Expenses	15,000.00

Total Amount Warrants drawn 1867 and 1868	$100,152.10
“ “ “ “ 1869 and 1870	216,062.96

Mr. McCANN. Mr. President, I move that the reading of the tabular statement be dispensed with, and 200 copies ordered printed.

The motion was agreed to.

The Secretary read the following communication from Hon. John Gillespie, State Auditor.

State of Nebraska.
Auditor's Office,
Lincoln, Neb., June 22, 1871

Hon. Silas A. Strickland, President of Constitutional Convention.

Sir:

In response to a resolution of Constitutional Convention of 21st inst, asking for a statement "showing the amount of Commencement Fees reported to this office, under the act of the Legislature approved June 22, 1867, and the names of the counties and courts where the same was returned, and the amounts from each", I have the honor to report the following as returned to this office:

FIRST JUDICIAL DISTRICT, HON. O. P. MASON, JUDGE.

Commencement Fees reported from;

County	Amount
Otoe	$2,690
Nemaha	1,220
Richardson	835
Pawnee	200
Johnson	255
Gage	385
Jefferson	30
Saline	10

Total amount reported in first Judicial District...$5,625

SECOND JUDICIAL DISTRICT, HON. GEO. B. LAKE, JUDGE.

Commencement Fees reported from;

County	Amount
Douglas	$7,125
Cass	1,365
Sarpy	365
Lancaster	565
Saunders	100
Seward	60

Total amount reported in 2nd Judicial District...$9,580

THIRD JUDICIAL DISTRICT, HON. L. CROUNSE, JUDGE.

Commencement Fees reported from;

County	Amount
Washington	$570
Dodge	605
Platte	235
Lincoln	325
Burt	130
Dakota	195
Cuming	85
Hall	80
Colfax	50
Cedar	25

Total amount reported in 3rd Judicial District...$2,240

RECAPITULATION.

1st Judicial Dist.	5,625
2nd Judicial Dist.	9,580
3rd Judicial Dist.	2,240
Total	$17,445
Supreme Court	410
Grand total	$17,855

All of which is respectfully submitted.

Very respectfully
Your Obt. Servt.
JOHN GILLESPIE,
State Auditor.

Mr. LAKE. Mr. President, I move that the report from the Auditor be referred to the Judiciary Committee.

The motion was agreed to.

The Secretary read the following communication from the Clerk of the Supreme Court:

Office of Clerk of the Supreme Court, State of Nebraska.

Lincoln, June 22, 1871.

To the Hon. the members of the Constitutional Convention.

Gentlemen:—In accordance with a resolution, this day passed by your honorable body, I have the honor to report.

1. That the number of cases now pending in the Supreme Court is sixteen (16).

2. That the number of cases heard and determined in said court since the State organization is 88.

3. That the counties wherein such actions were originally commenced are as follows: Douglas (32), Otoe (30), Cass (7), Nemaha (4), Lancaster (3), Dodge (3), Pawnee (2), Burt (2), Dakota (2), Washington (2), and Lincoln (1). Total 88.

Very respectfully

Your obedient servant,

GUY A. BROWN,

Clerk of Supreme Cr't.

Mr. MANDERSON. Mr. President, I move that the communication be referred to the Judiciary Committee.

The motion was agreed to.

The Secretary read a communication from the Auditor of State as follows:

Auditor's Office,

Lincoln, Neb., June 21, 1871.

Hon. S. A. Strickland,

President Constitutional Convention:

Sir:

In reply to the following resolution of the Constitutional Convention of the 20th inst., viz.:

RESOLVED: That the Auditor of State be requested to furnish to this Convention, without delay, a statement showing the entire indebtedness of the State, outstanding and unpaid at this date, including all unpaid and outstanding warrants and bonds of the territory of Nebraska.

I have the honor to report the following:

STATE INDEBTEDNESS.

Outstanding warrants (general fund)	$130,000
Outstanding warrants (building fund)	40,000
Territorial militia bonds, etc., (held by school fund)	36,300
Interest on bonds and floating indebtedness	25,000
Loan of "University fund" (Act approved February 6, 1871)	16.000
Annual expenses on general fund	200,000
Total Indebtedness	$447,300

RESOURCES

Tax levy of 1870 ("general fund")	$122,500
Tax levy of delinquent general fund taxes	60,500
Tax levy of sinking fund 1870	26,800
Tax levy of delinquent S R L taxes	18,000
Total resources	$227,800
Amount of liabilities over resources	$219,500

The foregoing shows the financial condition of the State, by enumerating the outstanding indebtedness and expenses annually of the State, and giving a statement of the State's resources, for the payment of the same, as now provided by law, which leaves a balance of indebtedness to be provided for of $219,500.

I am respectfully,
your obedient servant,
JOHN GILLESPIE,
State Auditor.

Mr. KIRKPATRICK. Mr. President, I move that the communication be laid on the table, and 100 copies be printed for the use of this Convention.

Mr. WILSON. I move to amend by making the number 1,000.

The amendment was not agreed to.

Mr. McCANN. I move to amend by fixing the number at 500 copies.

The Convention divided and the amendment was agreed to.

The motion as amended was agreed to.

The Secretary read the following communication from the Acting Governor:

State of Nebraska,
Executive Department,
Lincoln, June 22, 1871.

To the Honorable, the President of the Convention.

Dear Sir:-

In answer to the enquiry of your honorable body in relation to the cost of the public printing of the this State, up to this date, I have to state, that in answer to an enquiry addressed to the Auditor of State, I am informed the entire disbursements for this purpose up to this time amounts to the sum of $20,851.-10.

I am very respectfully,
Your obedient servant,
WM. H. JAMES,
Sect. of State.

Mr. ABBOTT. I move it be referred to the Committee on Public Accounts and Expenditures.

The motion was agreed to.

Mr. McCANN. Mr. President, I would ask the Secretary if the communication of the Auditor in response to the resolution requesting a statement of school lands sold has been received and if so that it be read.

The PRESIDENT. The Secretary has read that statement and it has been ordered printed.

Mr. McCANN. I would call the attention of the Convention to the remark of the Auditor to the question, "How much has been raised annually by direct taxation for common schools, etc.." He says, "there has been levied annually two (2) mills upon the assessed valuation of the taxable property of the State for common schools." I apprehend, Mr. President, the object of the mover was to get the gross amount RAISED, NOT the amount LEVIED. I want to know how much has been raised; and I take it that was the object of the motion.

Mr. ABBOTT. Another question was not answered—the number of acres of school lands entered under the pre-emption laws. I would like that embodied.

Mr. McCANN. Mr. President, I move that the statement be referred to the Auditor for correction.

Mr. CAMPBELL. I would also offer an amendment, Mr. President, that he state how much was received from Otoe county.

Mr. TOWLE. The report presented this morning from the Auditor and ordered printed, contains all the necessary information.

Mr. McCANN. Mr. President, I would state, in reply to the gentleman that the information wanted is for the committee; that it is not in shape to obtain the object desired. I will put my resolution in writing, asking that this report be referred to the Auditor for correction in the two items specified.

Mr. NELIGH. I also would like incorporated in the resolution of the gentleman from Otoe "that the Auditor be requested to inform this Convention if there is any county in this State of the name of Cuming, and if so what amount of school lands have been sold, and its average price per acre."

Mr. GIBBS. Mr. President, I would call the attention of the Convention to the fact that Burt County is left out. A large portion of land has been sold there.

The PRESIDENT. I notice that in one of the other communications Burt County is left out. I don't know why.

Mr. SPEICE. I desire to know the number of acres sold in Platte County. I know the greater portion of Section 16, Township 17, Range 1, East, has been sold. I would like to have the Auditor report any that have been reported to him.

The PRESIDENT. Will the gentleman from Platte (Mr. Speice) offer a resolution?

Mr. SPEICE. I will.

The PRESIDENT. Please reduce it to writing.

Mr. SPRAGUE. I find there are a great many mistakes in this report of the Auditor's. I know there was a much larger amount of lands sold in our County (Saunders) than is here credited. According to the Auditor's report there has been but 640 acres sold in our County.

Mr. WOOLWORTH. Mr. President, I am told that the records in the Dept. of State, are very defective, that they will not show all the selections of land, nor nearly all, and I would suggest, if it is possible that an inquiry be extended to the officers of the Land offices of the different districts, and if we do not find the desired information there, then an inquiry be directed to the General Land office; this investigation to be as thorough and extensive as possible. Now I do not know anything about this matter myself, for I have never had any business which called me to investigate it. I have not been a member of the Legislature, or in any other way whatever been connected with the Government. I merely state what is told me, and if it is true that the records of any department of our State Government are defective the matter should be looked up. I don't make any motion, Mr. President, I merely suggest. It is for those who are connected with this matter to take action in it.

Mr. HASCALL. Mr. President, I think this whole matter can be reached through our various State officials here in Lincoln. When these school lands are sold, of course the money would come into the State Treasury. If the money has not come into the Treasury we can assertain from the Treasures of the different Counties why it has not. It is a very easy matter to reach it in that way.

Mr. WOOLWORTH. It seems to me, Mr. President, that the right place to commence these inquiries is at the fountain head—at the different land offices. I speak now, not merely of the 16th and 36th Sections, but with reference to a great many other donations which have been made by the General Government. If it is true that these departments here, do not contain the information required, then that information ought to be obtained at once from the local or General Land offices. I don't know anything about it. I make no charges. I merely re-echo statements which have been made in my presence since I came here: but I would like to know, for my own satisfaction just what disposition has been made of these lands.

Mr. SPEICE. I would like very much to have the information which the gentleman from Douglas (Mr. Woolworth) speaks of; but I don't understand that the resolution spoken of here, touches anything other than the 16th and 36th sections. I take it, that the statement of the Auditor now before the Convention, would, perhaps, if corrected, show all the lands which have been sold by the different land offices.

Mr. McCANN. Mr. President, I wish to offer a resolution.

The resolution is read by the Secretary as follows:

RESOLVED: That the report of the Auditor of State, in reply to the resolution of the Convention of the 20th inst., asking for a statement of school lands, value, etc., be respectfully returned to the Auditor, with the request that he further inform the Convention.

1st. As to the amount of taxes actually collected, and from what counties.

2nd. As to the number of acres taken under homestead and pre-emtion laws.

The PRESIDENT, I think the gentleman from Cuming (Mr. Neligh) offers an amendment.

Mr. NELIGH. Yes sir.

The Secretary read the amendment, as follows:

RESOLVED: That the Auditor of this State be requested to inform this Convention, if there is any county in this State of the name of Cuming, and if so, what amount of school lands has been sold, and its average price per acre.

The resolution was referred to Committee on Education.

Mr. SPEICE. Mr. President, I offer an amendment to the resolution of the gentleman from Otoe (Mr. McCann).

The Secretary read the resolution as follows:

RESOLVED: That the Auditor of State be requested to report to this Convention, the number of acres of school land sold in Platte County, together with the amount of money received therefor.

Amendment agreed to.

Mr. SPIECE. I see that the counties of L' Eau qui Court and Madison are not mentioned in the list of counties published in the Auditor's report. I move that these counties be considered, in the resolution.

The PRESIDENT. It will be done, without objection is made.

Mr. LAKE. Mr. President. It seems to me that these amendments to the resolution offered by the gentleman from Otoe, (Mr. McCann) are somewhat out of place. for this reason: the Auditor has answered the questions asked him, so far as this matter is concerned. His answer to the first question is "first, whole amount of school lands sold, 86,840." To the second question he answers; "Second, average price per acre, $9.09."

To the 3rd, "Third, number of acres sold in each county," and follows with a list of the different counties in the State, and set opposite each the number of acres sold in that county. Now, unless we impeach the integrity and fairness of the Auditor, he has reported all that appears in his office. It seems to me that if information be desired more specially on this subject, there should be a further and independent resolution, directing him to report specially as to those sections, and not encumber the resolution of the gentleman from Otoe (Mr. McCann) in this manner. Now I am perfectly satisfied that the information desired is not to be found in the Auditor's office, because I believe the Auditor, when he made this report, reported all the information in his possession relative to these three questions: First as to the whole amount of school lands sold, Second the average price per acre and, third the number of acres sold in each county. He has answer these interrogatories, and we have that answer on our tables before us. It seems to me that this matter is entirely out of order.

Mr. GRAY. Mr. President. I have no doubt but that this report of the Auditor's contains a statement of the whole matter appearing upon the records in his possession. I have no doubt but that these counties that don't appear have not made their returns, and consequently could not be put upon the report. That information can be obtained in a moment by sending a Committee to ask the Auditor whether he has any such information in his possession, and if gentlemen here have any doubt about the whole matter appearing in this report, they can send a Committee to wait upon the Auditor.

Mr. SPRAGUE. Mr. President, I wish to offer an amendment to the resolution of the gentleman from Otoe (Mr. McCann).

The Secretary read the resolution as follows:

RESOLVED: That the report of the Auditor of State, in response to a resolution of this Committee of the 20th inst., with request for statements of school lands sold and etc., be referred back to said Auditor with a request for a statement of all school lands sold in Saunders county, not only in the years 1867-68, but also all sold in said county in the years of 1869 and 1870.

Mr. ESTABROOK. Mr. President, I would like to hear from the gentlemen on this floor, representing these counties, whether there has been returns to the State officers from these counties. I would like to hear from the gentleman from Cuming, (Mr. Neligh)

Mr. NELIGH. I am satisfied that there has been considerable lands sold in Cuming county, and I have a communication from the clerk of the county asking me to obtain deeds from the State, and I have no doubt there is something appearing on the State records here concerning these sales.

Mr. ESTABROOK. I would like to ask further from the gentleman, if he thinks the county Treasurer has made any report to the State.

Mr. NELIGH. I have no doubt he has sir.

Mr. ESTABROOK. Mr. President, perhaps the proper place to direct this inquiry is to the Treasury department.

Mr. SPRAGUE. Mr. President. In introducing the resolution offered by me, I do not intend to cast any reflection upon the Auditor; but I am satisfied that there has been sales reported from Saunders county, which do not appear on this statement.

Mr. SPEICE. Mr. President, before putting the amendment I have offered. I have this to say to the gentleman from Douglas(Mr. Estabrook) in answer to his question whether we are confident that any lands have been sold in our counties, and if so, whether reports have been made to the Auditor. In regard to the first question. I can answer, yes sir, positively. I am satisfied that almost the entire amount of Town 17, Range 1, East; also of 18 Range 1, East. But whether the county officers have reported the sales to the State officers, or not, I cannot tell.

I do not think that by offering this resolution, we have any design to impeach the report of the Auditor. I started out with the belief that the Auditor had made a mistake and if he has, it would not be any discourtesy to ask him whether he has or not. If the county officers are at fault I for one desire to know it.

Mr. ABBOTT. Mr. President. I move that the Auditor's report and the whole thing be referred to a Committee of three.

Mr. WOOLWORTH. It seems to me, that the Committee on Education, School Funds and Lands is the proper one to commit this matter to.

Mr. ABBOTT. I accept the suggestion of the gentleman from Douglas (Mr. Woolworth) to commit to the Standing Committee on Education, No. 6.

Mr. GIBBS. I have spoken to the Auditor, and he says he has reported all the lands on his records; The fault must be with the county officers. But there is apparently a mistake in this report, as there is money reported received from counties in which it does not appear any lands have been sold.

Mr. McCANN. I agree with the gentleman from Douglas, (Mr. Lake) that my resolution ought not to be encumbered by these amendments.

The PRESIDENT. The question is upon the motion to commit by the gentlemen from Hall (Mr. Abbott).

The motion to commit was agreed to.

The PRESIDENT. The question now is on the adoption of the resolution of the gentleman from Saunders (Mr. Sprague).

Mr. SPRAGUE. Mr. President, I ask leave to withdraw my resolution now,—or instead of withdrawing it, I would ask that it be referred to the same Committee with the others.

So referred NEM. CON.

Petitions.

Mr. THOMAS. Mr. President, I

desire to offer a petition from De Forrest Porter and 74 others, and I ask that it be referred to the Committee on Schedule.

The PRESIDENT. It will be so referred if no one objects.

Mr. SPEICE. Mr. President, I call for the reading of the petition.

The Secretary read the petition as follows:

To the Honorable, the members of the Constitutional Convention of the State of Nebraska in Convention assembled.

We the undersigned, citizens and voters of the State do hereby most respectfully and earnestly petition your honorable body to provide for the vacation of all State and county officers of said State: and to provide for the election of officers to fill the same, at the same time of the vote for or against the adoption of the new Constitution which you shall form.

(Signed)
DE FORREST PORTER.
And 74 others.

Reports of Standing Committees

Mr. LAKE. Mr. President, The Committee on Judiciary wish to make report.

The report was read by the Secretary as follows:

Mr. President. The Judiciary Committee to whom was referred the resolution relative to printing which is herewith returned, have had the same under consideration and beg leave to report that they are unable to find that any provision has been made for the printing of this Convention, that it is not included in any of the contracts for printing entered into on behalf of the State with any person or persons whomsoever.

Your Committee are of the opinion that the subject of printing is entirely within the control of this Convention, and that the best interest of the State as well as a proper regard to the spirit of the Constitution require that the printing be given to the lowest responsible bidder who is in a situation to do the work.

Your Committee would further say that they see no reason for providing at this time for any but the incidental printing, and therefore submit the following as a substitute for the original resolution and recommend its adoption.

RESOLVED: That this Convention has the right to control all the printing necessary to a proper discharge of its duties.

Your Committee further recommend that the necessary incidental printing be let as soon as practicable to the lowest responsible bidder, five days notice being first given. That person to whom the contract shall be awarded be required to give ample security for the prompt and faithful performance of the work and that the contract be unassignable.

GEO. B. LAKE,
Chairman.

Mr. McCANN. Mr. President, I move the adoption of the resolution.

The motion was agreed to.

Mr. ESTABROOK. Mr. President, I move it be referred to the Committee on Printing and Binding with instructions to carry the same into effect.

The motion was agreed to.

Mr. THOMAS. Mr. President, The Judiciary Committee desire to make report.

The Secretary read the report as follows:

Mr. President. Your Committee on Judiciary to whom was referred the following resolution to-wit:

RESOLVED: That the Judiciary Committee be and are hereby requested to inquire into and report upon the propriety of establishing a board or tribunal for the determination of the plea of insanity, when the same is interposed in criminal cases, said board to consist of the Superintendent of the Insane Asylum and such other learned physicians as by law shall be added to such board." Would respectfully report, that we have carefully examined the said resolution and report the same back with the recommendation, that the provisions thereof be not embodied in the Constitution.

GEO. B. LAKE,
Chairman Judiciary Com.

Mr. MANDERSON. Mr. President, I move that the report be adopted.

Mr. HASCALL. Mr. President, I move to amend by saying that we accept the report, then, after due consideration the proposition may be entertained.

The PRESIDENT. When the report is read it is considered accepted, the question is on the adoption.

The motion was agreed to.

Mr. MANDERSON. Mr. President, At the request of the Chairman of the Committee on Judiciary, I beg leave to offer this report.

The report was read by the Secretary as follows:

Report of the Standing Committee (No. 1,) Judiciary, (through Mr. Manderson.)

Your Committee on Judiciary to which was referred the following resolution:

RESOLVED: That the Judiciary Committee submit a report to this Convention on the Constitutionality of abolishing the Grand Jury system in this State". Begs leave to report that in its opinion it is Constitutional to abolish the Grand Jury system.

CHARLES F. MANDERSON,
for the Committee on Judiciary.

Mr. ESTABROOK. I presume these resolutions are offered as suggestions to the different Committees, those referred to the Judiciary are to elicit their opinion as to the law, when they report, they become suggestions, and as such should be on our table. They may be adopted in the Constitution or not.

Mr. HASCALL. Mr. President, I would say that the views just expressed were the reasons why I voted against adopting the last report. I think it is improper for reports to come in here in regard to the frame of the Constitution. I think as the General has said, nothwithstanding the adoption of these reports, the proposition is still before the Convention. It looks as an improper proceeding to transact business in that way.

Mr. ESTABROOK. If this report was referred to a Committee for direction, it seems to me it should go back to that Committee.

Mr. MANDERSON. Mr. President, It seems to me the subject matter of this resolution is more properly for the Committee on Bill of Rights. As I understand the resolution it was merely to obtain from the Judicial Committee its opinion as to the constitutionality of abolishing the Grand Jury system. That Committee has given its opinion. I do not think myself that a motion to adopt the report would be in order, but a motion to refer this report to the Committee on Bill of Rights I think would be in order. I therefore make such motion.

Mr. WAKELEY. Mr. President, I have no sort of choice personally as to what is done with the report, but as inaugurating a system for precedent, I desire to say a word upon it, I do not understand that when a report from the Committee is made here it requires no action on the part of the Convention; it does not recommend any action, but is merely the expression of the Committee on an abstract question of law. I do not understand, under those circumstances, the Convention is called upon to take any action on the report. I do not see anything in that report to be referred to the Committee on Bill of Rights. The report states the Judicial Committee deem it constitutional to abolish the Grand Jury system, they do not ask the Convention to take any action, do not propose any action. No member of the Convention proposes any action. Mr. Manderson proposes that the report be referred to the Committee on Bill of Rights. I suggest that if the Committee on Bill of Rights should take any action it should be presented in the form of a resolution. What you send to the Committee by referring this report is simply an expression of the Judicial Committee upon an abstract question of Constitutional law.

Mr. MYERS. Mr. President, I move that the report be laid on the table.

The PRESIDENT. Allow me to say I think these motions should be referred back unless they are to be laid on the table or referred to some other Committee, as if you should adopt and the question should come up at a future time it would require a two-thirds vote of the body to change.

Mr. MAXWELL. Mr. President—

Mr. MYERS. I object, a motion to lay on the table is not debatable.

Mr. HINMAN. A motion to commit is not debatable.

Mr. MAXWELL. The rules read, to commit, to amend, to lay on the table, so that the motion to lay on the table is third.

The PRESIDENT. By the rule, the motion to lay on the table, by the gentleman from Douglas (Mr. Myers) takes precedence.

The motion was agreed to.

Mr. MASON. Mr. President, Your Committee on Bill of Rights present their report.

The Secretary read the report as follows:

MR. PRESIDENT:

Your Committee on "Bill of Rights" report the following preamble and article 1 of the proposed Constitution and would respectfully recommend that the same be adopted by the Convention.

O. P. MASON,
Chairman Committee Bill of Rights.

THE CONSTITUTION OF THE STATE OF NEBRASKA.

PREAMBLE.

We, the people of the State of Nebraska—grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and posterity, do ordain and establish this Constitution for the State of Nebraska.

ARTICLE I.

Bill of Rights.

¶ 1. All men are by nature free and independent, and having certain inherent and inalienable rights—among these are life, liberty and the pursuit of happiness. To secure these rights and protection of property, governments are instituted among men, deriving their just power from the consent of the governed.

¶ 2. No person shall be deprived of life, liberty or property without due process of law.

¶ 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship, nor shall any preference be given by law to any religious denomination or mode of worship.

¶ 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty, and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

¶ 5. The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men, may be authorized by law.

¶ 6. The right of the people to be secure in their persons, houses papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue without probable cause, supported by affidavit, particularly describing the place to be searched and the persons or things to be seized.

¶ 7. All persons shall be bailable by sufficient securities, except for treason and murder, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it.

¶ 8. No person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger.

¶ 9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation, and have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offence is alleged to have been committed.

¶ 10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offence.

¶ 11. All penalties shall be proportioned to the nature of the offense; and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offense committed within the same, nor shall cruel and unusual punishment be inflicted.

¶ 12. No person shall be imprisoned for debt, arising out of, or founded on a contract express or implied, except in cases where there is strong presumption of fraud.

¶13. Private property shall not be taken or damaged for public use without just compensation. Such compensation when not made by the state, shall be ascertained by a jury as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it was taken.

¶ 14. No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

¶ 15. The military shall be in strict subordination to the civil power.

¶ 16. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war except in the manner prescribed by law.

¶ 17. The people have a right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for a redress of grievances.

¶ 18. All elections shall be free and there shall be no hindrance or impediment to the right of a qualified voter to exercise his franchise.

¶ 19. Treason against the state shall consist only in levying war against the state, or in adhering to its enemies giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

¶ 20. The writ of error shall be a writ of right in all cases of felony, and in all capital cases shall operate as a supersedeas to stay the execution of the sentence of death until the further order of the supreme court in the premises.

¶ 21. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws. exempting a reasonable amount of property from seizure or sale for the payment of any debts or liability.

¶ 22. Aliens, who are, or may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property of native born citizens.

¶ 23. Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay.

¶ 24. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

¶ 25. The powers of the government of this State are divided into three distinct departments, the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

¶ 26. This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people.

Mr. WOOLWORTH. Mr. President, I move that the report be accepted and ordered printed.

The motion was agreed to.

Mr. WOOLWORTH. Mr. President, the Committee cn Executive agree to submit the following report, and they ask of the Convention to adopt the article in the Constitution. I move that the report be accepted and 100 copies ordered printed.

Motion agreed to.

Bill of Rights.

Mr. WOOLWORTH. Mr President, if it is in order. I move that the Bill of Rights be made the special order for two o'clock for to-morrow.

Mr. MASON. Mr. President, before that motion is put I would like to inquire if that would give sufficient time for the printer?

Mr. WOOLWORTH. I supposed we would get them to-morrow. I am willing to set it for Monday, at two o'clock.

Mr. MASON. If necessary, and the printing can be done, I would favor the consideration of the article to-morrow afternoon. Perhaps the order might be made, and if the printing is not done we can reconsider the hour.

Mr. KIRKPATRICK. I hope the gentleman from Douglas (Mr. Woolworth) who is the Chairman of the Committee on Executive, will let this go over for a short time. I hope those gentlemen who are ready to report will not press their business until the other Committees can get together and report. I would like him to say Monday afternoon.

Mr. WOOLWORTH. All I desire is to facilitate the business of the Convention as rapidly as possible.

The PRESIDENT. Gentlemen; the question is upon the motion for to-morrow.

Mr. MASON. I would not insist upon it if any member of the House desired to be absent. But I hope the order may be made. If it should so happen that the business of Committees was more important, the order could be continued.

Mr. WAKELEY. I am opposed, at this time, to making this article a special order for any day. Some thirty other standing Committees, all of whom have important work in hand, have yet to report; and until the business is more advanced than at this time, I do not think it wise to make any subject a special order for any particular time. I think we will only retard business by so doing. There will be ample time hereafter, when we see what will be the earliest leisure the Convention will have to go into it.

Mr. LAKE. I agree with my colleague (Mr. Wakeley) entirely in this that it will be best to wait until the printed report is laid upon our tables, and we have an opportunity to scan it; then we can determine better what time we prefer to take the matter up. Then we can act intelligently as to the time we would prefer to consider the subject matter of the report. I, myself, for one can say I shall be quite busy between now and the time the gentleman from Otoe (Mr. Mason) has selected for the consideration of this article, and I much prefer, if he has not some good reason to the contrary, that it should be postponed to the time indicated by my colleague (Mr. Woolworth), who first requested the extension of time till Monday afternoon.

Mr. MASON. I desire to say it was not my motion to consider to-morrow, but the gentleman from Douglas (Mr. Woolworth) whose motion I seconded.

Mr. NEWSOM. I hope the policy indicated by this motion will not prevail for this reason. It is readily to be seen that the gentlemen composing this Committee of Bill of Rights are the only gentlemen who have considered this question, and their views and opinions are the only ones which are matured, therefore they are the only persons qualified to consider that question immediately. They have considered the subject matter fully, and none others have. I hope it will not prevail, because if it does these gentlemen will carry their ideas. I am not in favor of an article presented by any Committee being the article to be adopted by this Convention. I want a large discussion of all questions before this body, and we ought to have more time. I prefer that this thing lay over and no time set, so this report can be printed and members have time to consider it.

Mr. WOOLWORTH. Mr. President, I will withdraw my motion with the permission of my second.

Motion withdrawn.

Mr. CASSELL. Mr. President. I have a report to present.

The Secretary read the report as follows:

The Committee on State Institutions and Public Buildings, respectfully submit the following report:

That the report of the State Auditor, on expenditures on State Capitol and Grounds, be reported back to the Convention, with a recommendation that it be referred to the Committee on Public Accounts and Expenditures,

J. N. CASSELL.
Ch. Com.

Report adopted and referred to Committee on Public Accounts and Expenditures.

Adjournment.

Mr. MYERS. Mr. President, I move the Convention do now adjourn.

Mr. MASON. I would suggest we adjourn untill to-morrow morning.

Mr. MYERS. I withdraw my motion.

Mr. WAKELEY. Mr. President, I would inquire if we have passed through the regular business.

The PRESIDENT. We are under the order of "Resolutions."

Mr. CAMPBELL. I move we adjourn till to-morrow morning.

Mr. MAXWELL. Mr. President, I would desire to go through the whole business before the Convention.

Mr. CAMPBELL. I withdraw my motion.

The PRESIDENT. I have a little matter to lay before the members. The Masonic Grand Lodge have made application for the use of this hall this evening. If there is no opposition, I will grant permission. (Agreed. Agreed.)

Mr. PHILPOTT. Mr. President, I have a resolution I desire to offer, if I have leave.

The PRESIDENT. Has he leave? ("No", "No", "Yes.")

The PRESIDENT. Out of courtesy to the gentleman from Lancaster (Mr. Philpott)—

Mr. MYERS. I call for the reading of the order of business, Mr. President.

The PRESIDENT (reading) "Reports from standing Committees.

Reports from select Committees.

Presentation of resolutions and propositions to amend the Constitution."

The question is upon adjournment.

The Convention divided. Motion to adjourn lost.

Mr. MAXWELL. Mr. President, I offer a proposition to amend the Constitution.

The Secretary reads the proposition as follows:

The Legislature shall provide a thorough and efficient system of free schools whereby all children of this state shall have a good common school education.

2nd. The Legislature shall provide for the establishment, and maintenance of the public library in each township, precinct and ward, and all monies belonging to the public derived from fines, penalties or forfeitures shall be apportioned to the support of such libraries.

3rd. There shall be elected four regents of the University, whose term of office shall be four years; that immediately after the first election under this Constitution, said regents shall be classified by lot so that one shall hold for one year: one for two years: one for three years and one for four years. And thereafter, one of said regents shall be elected at the annual election in each year. When a vacancy occurs in the office of Regents, the Governor shall appoint to fill the vacancy until the next general election. The Chief Justice of the Supreme Court shall be, Ex-Officio, a member of the board of Regents.

4th. The Regents of the University, and their successors in office, shall constitute a body corporate, by the name and title of "The Regents of the University of Nebraska."

The Board of Regents shall have the supervision of the University, and the direction and control of the University fund, and all expenses thereof.

The Legislature shall provide for the establishment, support and maintenance of an Agricultural College for instruction in practical agriculture, and the natural sciences connected therewith.

5th. The proceeds from the sale of all lands that have been, or hereafter may be granted by the United States to the State for educational purposes, shall be held perpetually in trust by the State, and shall be and remain a perpetual fund which shall not be diminished; the interest and income of which shall be inviolably appropriated, and annually applied to the support of the schools for which the grant was made.

6th. All lands, the title to which shall fail from a defect of heirs shall escheat to the State, and the interest on the proceeds of the sale shall be appropriated exclusively to the support of common schools.

Referred to Committee on Education.

Mr. PHILPOTT. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That so much of the present Constitution as relates to the judicial department of the Government, be referred to the Judicial Committee.

2nd. That so much as relates to the Executive department, to the Executive Committee.

3rd. That so much as relates to the Legislative department to the Legislative Committee.

4th. That so much as relates to Finance, to the Committee on Revenue and Finance.

5th. That so much as relates to Eminent Domain, to the Committee on State Lands, other than School Lands.

6th. That so much as relates to Education, to the Committee on Education, School Funds and Lands.

7th. That so much as relates to Corporations in sections 1, 2 and 3 under that title, be referred to the Committee on Miscellaneous Corporations, and that section 4 of the same title be referred to Committee on Municipal Corporations.

8th. That so much as relates to amendments be referred to the Committee on Future Amendments.

9th. That so much as relates to

Boundaries, be referred to the Committee on Federal Relations.

10th. That so much as relates to the title"Schedule" be referred to the Committee on Schedule.

And that the said Committees be, and they are hereby instructed to consider the same, and to prepare and report such amendments as in their judgment should be made to the Constitution.

Mr. PHILPOTT. The object of that resolution, Mr. President, is, that we may bring order out of what otherwise may be confusion. When the Committees bring in their various reports, we may be able to ascertain just how we are getting along in the formation of the Constitution. It seems to me it ought to be adopted.

Resolution adopted.

Mr. SPRAGUE. Mr. President, I wish to offer a resolution.

The resolution is read by the Secretary as follows:

WHEREAS: Under the Revenue laws now in force in this State, it not infrequently occurs that the assessment and valuation of the real estate of different portions of the same county, is very disproportionate and unequal, therefore.

RESOLVED: That the Revenue and Finance Committee be instructed to inquire into the propriety of reporting to this Convention a proposition to be engrafted in the Constitution now being made, requiring that the assessment and valuation of all the real estate of any one county shall be made by one man, and not re-valued oftener than once in three years.

Referred to the Committee on Revenue and Finance.

Adjournment.

Mr. ABBOTT. Mr. President, I move we adjourn until ten o'clock to-morrow morning.

The Convention divided and the motion was lost.

Resolutions Again.

Mr. KILBURN. Mr. President, I wish to offer a resolution.

The Secretary reads the resolution as follows:

RESOLVED: That the property of the State, counties, and other municipal corporations, both real and personal, and such other property, as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law.

PROVIDED: That not more than ten thousand dollars of property of any church corporation shall be exempted from taxation. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.

Referred to Committee on Bill of Rights.

Mr. MOORE. Mr. President, I wish to offer a resolution.

The Secretary reads the resolution as follows:

RESOLVED: That the Committee on Bill of Rights take into consideration the propriety of placing in the Constitution a provision prohibiting capital punishment in this State, and substituting therefor, imprisonment for life, said provision to remain in full force for the term of five years from the adoption of the Constitution.

Referred to the Committee on Bill of Rights.

Adjournment Again.

Mr. CAMPBELL. Mr. President,I move we adjourn until to-morrow morning at ten o'clock.

The Convention divided, and the

motion was lost.

Resolutions Again.

Mr. CURTIS. Mr. President, I have a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Grand Jury system in this State be abolished.

Referred to the Committee on Bill of Rights.

Adjournment Again.

Mr. LEY. Mr. President, I move we adjourn until to-morrow morning at ten o'clock.

The Convention divided and the motion lost.

Resolutions Again.

Mr. WAKELEY. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

WHEREAS: It is desirable that the choice of Judges should be removed as far as practicable from party or political influence.

RESOLVED: That it should be provided in the Constitution, that Judges shall not be chosen at any general election, or within sixty days next before, or next after a general election.

2nd. RESOLVED: That provision should be made, authorizing the Legislature to establish in cities having a population of over ten thousand, municipal courts with limited civil and criminal jurisdiction.

Referred to the Committee on Judiciary.

Mr. WILSON. Mr. President, I desire to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That no person shall be eligible to the office of governor, or lieutenant governor, who shall not have attained the age of 30 years, and been for five years next preceeding his election, a citizen of the United States and of this State. Neither the governor, lieutenant governor, auditor of public accounts, secretary of state, superintendent of public instruction nor attorney general shall be eligible to any other office during the period for which he shall have been elected.

Referred to Executive Committee.

Adjournment Again.

Mr. STEWART. I move we adjourn until to-morrow morning at ten o'clock.

Mr. ESTABROOK. Mr. President, I would like to offer a resolution before the motion to adjourn is put, if I may have leave. "(Leave," "Leave.")

The Secretary read the resolution as follows:

RESOLVED: That the acting Governor be requested to furnish, for the use of this Convention a statement of all the proceedings had in relation to the selection of the Agricultural College Lands, so far as such proceedings appear among the records of the Executive office; or so far as they may have come to his knowledge from other sources.

Mr. ESTABROOK. I move the adoption of the resolution.

The motion was agreed to.

Mr. NELIGH. I ask leave to offer a resolution. ("Leave.")

The Secretary read the resolution as follows:

WHEREAS: That the State of Nebraska is nearly entirely dependent on its agricultural resources, and as the products of its soil requires cheap and easy transportation to its different markets; and Whereas railroads are more convenient and superior than other class of communication, therefore be it

RESOLVED: That the Constitution contain under its appropriate article, a section No—, that counties, precincts, cities and towns may issue bonds for the encouragment of railroads by stock, or donation, not exceeding 15 per cent of its assessed valuation said bonds shall in no case exceed 8 per cent.

Mr. BOYD. I move the resolution be referred to Committee number 12, (County and Municipal Indebtedness.)

The resolution was so referred NEM. CON.

The PRESIDENT. The question is upon the motion of the gentleman from Pawnee, (Mr. Stewart.) to adjourn until to-morrow morning at ten o'clock.

The motion to adjourn was agreed to.

So the Convention (at twelve o'clock and four minutes) adjourned.

NINTH DAY.

Friday June 23, 1871.

The Convention met at ten o'clock a. m. and was called to order by the President.

Prayer.

Prayer was offered by Rev. L. B. Fifield, of Lincoln, as follows:

Oh Lord, we bless Thee for Thy loving kindness and for Thy truth. Wilt Thou be pleased in peace and safety to keep us this day. Wilt Thou send divine wisdom into all the earth; with new songs may men praise Thee, and may sin shrink affrighted from our hearts and truth be foremost everywhere. Amen.

Leave of Absence.

Mr. SCOFIELD. I ask leave of absence for Mr. Woolworth until to-morrow morning.

Leave granted NEM. CON.

Mr. PHILPOTT. I ask leave of absence for Mr. Robinson until to-morrow morning.

Leave granted NEM. CON.

Reading of Journal.

The Secretary read the last day's proceedings which were approved.

Mr. PHILPOTT. Mr. President, I wish to offer a resolution with reference to the Rev. Mr. Fifield, who has been acting as Chaplain.

Mr. MYERS. Mr. President, let it come under the regular order of the day.

Reports from Standing Committees.

The PRESIDENT. The reports of standing committee will be called in order.

Mr. CAMPBELL. Mr. President, I wish to submit a report from the Committee on Printing and Binding.

The Secretary read the report as follows:

Mr. President. Your Committee on Printing and Binding, to whom was referred the resolution to advertise for bids for incidental printing beg leave to report that the Committee has performed said duty.

J. C. CAMPBELL,
Chairman.

Report received.

Resolutions.

Mr. STEWART. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED: That the Constitution be so amended that there shall be five districts of the Circuit Court in this State, as follows:

First District—Richardson, Pawnee, Johnson, Gage, Jefferson, Thayer, Nuckolls, Webster, Franklin, Lincoln, Grant and Jackson counties.

Second District—Otoe, Nemaha and Lancaster counties.

Third District—Cass, Sarpy, Saunders, Seward, Saline, Butler, Polk, York, Fillmore, Clay, Hamilton, Adams and Kearney counties.

Fourth District—Douglas and Dodge counties.

Fifth District—Washington, Burt, Cuming, Dakota, Dixon, Cedar, L'Eau qui Court, Holt, Pierce, Wayne, Madison, Stanton, Colfax, Platte, Merrick, Hall, Boone, Greeley, Howard, Buffalo, Sherman, Valley, Dawson, Harrison, Monroe, Taylor, Lyon and Cheyenne counties, and that judges for the above districts be elected at the same time that the Constitution is submitted for adoption or rejection.

Mr. STEWART. Mr. President, I move the report be referred to the Judiciary Committee.

Motion agreed to.

Mr. STEVENSON. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

WHEREAS; God in His divine goodness, after He had created man and placed him in the garden of Eden, saw that he was lonely and down hearted, whereupon He created woman in order that he might have a partner in the trials and tribulations of this life; therefore be it

RESOLVED: That in order to perpetuate that divinity intended partnership, to secure domestic tranquility to ourselves and posterity, that the word "male" be never stricken from the Constitution of the State of Nebraska.

Mr. STEVENSON. Mr. President, I move its reference to the Committee on Suffrage.

Motion agreed to.

Mr. PARCHEN. Mr. President, I offer this resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Sergeant-at-arms be ordered to make out and have printed for the use of the Convention 200 copies of an accurate statement of the name, age, occupation, place of birth, postoffice, and whether married or single of the delegates and officers of this Convention.

Mr. HASCALL. I move its reference to the Sergeant-at-arms.

Motion agreed to.

Mr. WAKELEY. I move the ages of unmarried persons be omitted.

Mr. McCANN. Mr. President, This may be treated as a matter of levity, but it has an object in view. I would oppose the motion, and state this object is to arrive at the ages.

Mr. PHILPOTT. Mr. President, I have a resolution.

The Secretary read the resolution as follows:

WHEREAS: It is becoming in a people to recognize Almighty God in their civil and political capacities as a sovereign society, and eminently proper that the delegates of the people who are assembled to frame for such people a fundamental law for their government, should seek and ask for the guidance and blessings of Him who presides over the destiny of nations; and

WHEREAS: L. B. Fifield has thus far through the proceedings of this Convention daily waited upon the same, and acted for it in the capacity of chaplain; therefore be it

RESOLVED: That the Rev. L. B. Fifield for his said services receive the thanks of this Convention, and that he be elected by acclamation, chaplain of the same; and that he be paid for his services as such the same pay per diem allowed members of the Convention.

Mr. GRENELL. Mr. President, I see no necessity for this action, for the Convention has already taken action upon the matter.

Mr. PHILPOTT. Mr. President, the object of the resolution is this—It is true some action was taken by the Convention with regard to this matter, but it was merely the passing of a resolution asking that the clergymen of the city of Lincoln meet and arrange for some minister to perform this duty. Now, I am informed that this meeting was not held, for some reason. Through the kindness of Mr. Fifield we have not been left without a chaplain, but he has come here and opened the exercises with prayer, each day. I think we have no right to ask him to do this for nothing. We are able to pay for this service, and we ought to pay for it.

Mr. GRENELL. I would only ask the gentleman from Lancaster (Mr. Philpott), to amend the preamble so that it show why this action is taken.

Mr. MAXWELL. Mr. President, I certainly do not oppose the proposition to pay a chaplain but, at the same time, there is no evidence before this Convention that the other clergymen refuse to act. Has there been a Committee appointed to wait upon them and inform them of the action of the Convention, and they have refused to act? Now, then, if we vote this resolution, it in effect, says that the other clergymen of this city have refused to comply with the request of the Convention. It seems to me that, by that vote, we are placing ourselves in a false position. Until we know they refuse to act, we have no right to vote in this way. If Mr. Fifield is the only man who will officiate, then we should vote to pay him. I hope the resolution will not be adopted until we know the other clergymen refuse to act.

Mr. PHILPOTT. Mr. President, by leave of my second I will withdraw my motion until the matter is inquired into, although I am certain I am right about the action taken by the clergymen of this city; but yet, not to reflect upon the clergy, I will withdraw for the present.

Mr. KIRKPATRICK. It will be remembered there was early action taken by this Convention with regard to a Chaplain. It was deemed by this Convention a courtesy to all the members of the clergy of this city, to ask them to arrange the matter of officiating here, among themselves. I recollect seeing in the papers of this city, a call, to his brother clergymen, signed by Mr. Fifield, and that two ministers have officiated here and perhaps three. It may be there has been action taken, and that our present Chaplain is merely doing his part of the duty. I am opposed to this Convention going back on its own action.

Mr. CAMPBELL. Mr. President, I rise to a point of order. Is there a question before the house?

The PRESIDENT. There is.

Mr. CASSELL. I believe the resolution invited the ministers to officiate but there was no Committee appointed to invite them, and they have had no official notification of this resolution.

Mr. MYERS. Mr. President, I, for one, do not think it is right for this Convention to go about begging this service. I think it is right for this Convention to employ a minister to open our sessions with religious exercises, and pay him for it. We have invited the clergy of this city to make arrangements among themselves, by which we will have prayer here, no one has responded to that invitation except Father Fifield, except one gentleman who officiated at the request of the President. Now I am in favor of having prayer, as is the custom in bodies of this character, and that our Chaplain shall be an officer here, and have the rights of the floor. Let us have our minister, and not go around here begging these services.

Mr. PHILPOTT. Mr. President, I will say that I have amended my resolution. I will take the responsibility of it, and I offer it as amended.

The PRESIDENT. The Secretary will read the resolution as amended.

The Secretary read the resolution as follows:

WHEREAS: It is becoming in a people to recognize Almighty God, in their civil and religious capacities as a sovereign society, and eminently proper that the delegates of a people who are assembled to frame for such people a fundamental law for their government, should seek and ask for the guidance and blessings of Him who presides over the destiny of Nations;

AND WHEREAS the ministers of Lincoln, though requested by the Convention, have not arranged for prayer for this Convention,

AND WHEREAS L. B. Fifield has, thus far through the proceedings of this Convention, daily waited upon the same and acted for it in the capacity of Chaplain, therefore

BE IT RESOLVED: That Rev. L. B. Fifield, for his said services, receive the thanks of this Convention, and that he be elected by acclamation, Chaplain of the same and that he be paid for his services as such, the same pay per diem, allowed members of this Convention.

Mr. STEVENSON. Mr. President if we are to elect a Chaplain for this Convention I would move that the resolution be amended, and have him elected by ballot. There may be some difference of opinion as to who shall officiate. Therefore I move we proceed to elect a Chaplain by ballot.

Mr. MYERS. Mr. President I desire to speak. The clergymen of the town were requested by this Convention to appear here and officiate at the opening of our sessions. The notice was duly published, but none came save the Rev. Mr. Fifield. He came here not expecting pay, and has continued to officiate as Chaplain of this body without money and without price.

The PRESIDENT. I will say, gentlemen, that I have inquired into the matter, and this gentleman (Mr. Fifield) is the only one who seemed disposed to officiate. The question is upon the amendment.

Mr. ABBOTT. Mr. President, I think it is eminently proper that this Convention should open with prayer, and I am in favor of the resolution.

The PRESIDENT. Will not the

gentleman from Lancaster (Mr. Philpott) amend his resolution so as to elect by ballot?

Mr. PHILPOTT. Yes sir.

Mr. THOMAS. I would like to know, Mr. President—how the resolution will then read.

Mr. MYERS. Mr. President, I will move to strike out all after the word "Resolved" and that we now proceed to the election of a Chaplain.

Motion agreed to.

The PRESIDENT. The question is upon the resolution as amended.

Mr. TOWLE. Mr. President, I move that we strike out all the "Whereaseas's."

The PRESIDENT. The question is upon the motion of the gentleman from Richardson, (Mr. Towle) to strike out all the wherease's—the preamble.

Motion agreed to.

The PRESIDENT. The question is upon the adoption of the resolution as amended. The "Ayes" and "Nays" have been called for.

Mr. THOMAS. I withdraw the demand for the "ayes" and "nays"

The Secretary read the resolution as amended as follows:

RESOLVED: That this Convention do now proceed to the election of a Chaplain.

The resolution was agreed to.

The vote was taken with the following result.

Rev. Fifield	43
Rev. Peck	1
Rev. Lemon	1
Rev. Dungan	1
Rev. Young	1
Mr. Philpott	1
Blank	1
Total	49

The PRESIDENT. Rev. L. B. Fifield having received forty-three votes, is elected.

Printing of Reports.

Mr. ESTABROOK. Mr. President, this was laid on my desk, it is the report of the Executive Committee. It appears to have been printed in newspaper form. I think that by the motion to print, it was intended to be printed in bill form in order that it might be amended. I move you, Mr. President, that this report and all other reports from Committees as articles of the Constitution, be printed in bill form.

Mr. LAKE. The report ought also to be corrected as the heading reads "Report from the JUDICIARY Committee." It should be the EXECUTIVE.

The motion of Mr. Estabrook was agreed to.

Mr. WAKELEY. Mr. President, I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the journal of the proceedings of each day shall be printed in time to allow a copy to be placed on the desk of members before the opening of the session on the succeeding day.

The PRESIDENT. The question is upon the adoption of the resolution.

Mr. WAKELEY. The object I have in offering this resolution is this: Considerable time is occupied each morning by the reading of the journal, and this time may be saved by having the journal printed and placed upon the desks, and it will give us a better chance to make the necessary corrections. I don't think it would cost much.

Mr. LAKE. It seems to me we would incur a good deal of expense if we should adopt this plan. It seems to me if we are all here at the reading of the journal in the morning, each one can see whether the journal is correct in that which he has offered and save the expense of printing. I would like to know if the gentleman who introduced the resolution is informed what the expense would be?

Mr. WAKELEY. I am not so informed, but I would suggest that it might be referred to the Committee on Printing to ascertain the cost.

Mr. KIRKPATRICK. Mr. President, if the resolution is passed and the plan of the gentleman from Douglas (Mr. Wakeley) is followed, it will conflict with the rule of the Convention that the journal shall be read each morning.

Mr. CAMPBELL. Mr. President, I do not see any necessity for referring that to the Committee on Printing. That Committee is now pretty well informed, it will cost $25 to $30 per day. If the Convention sees fit to go into that additional expense, they can do so now without referring to the Committee.

Mr. ESTABROOK. Perhaps it might cost $25 per day if all the resolutions offered here were printed entire, which would not be necessary, but that there could be a saving of time to compensate for the additional expense. I have no doubt whatever, that it would be much more convenient, and that the record could be made more accurate. The journal is read now, members' attention is turned away, and they do not catch everything. If it is laid on our table every morning we can ascertain whether it is correct. I move this amendment, that is shall be done under the direction of the Printing Committee and that they strike out all that is not necessary to be printed, print simply notes or a sketch of the journal and that they exclude all they do not think necessary.

Mr. KIRKPATRICK. I do not agree that somebody shall be empowered to revise and curtail our part of the journal: I think the resolutions proposed are the most important part of the journal; very often I cannot hear the resolution read, but I will state right here this whole thing is imperfect. We ought to correct the journal. Suppose we adjourn this afternoon, the clerk then has to make up the journal, and the President examines to see if correct. It then goes to the Committee on Printing, and they will decide what portion of it is to be printed, and it comes back the day after to-morrow. It cannot be laid on our table to-morrow morning and when we do get it it is no use to us. I have been in bodies where this has been tried, and it never amounted to anything.

Mr. TOWLE. Mr. President, It appears to me this resolution should not pass the Convention. The idea advanced by the mover of the resolution was simply that it should be passed as a mere matter of economy. Now it has been told us by one gentleman on the Printing Committee that the cost would be $25 to $30 each journal, and the query is whether we had better sit half an hour to hear the journal read, which will come directly from the lips of the clerk, and we shall know if it is perfectly true, whether we shall spend half an hour of the whole house hearing that journal read or whether we shall spend this money in getting it printed. When we approve the journal what do we approve, the printed copy or the journal as it exists in the notes of the clerk? Then, suppose, in the amendment of the gentleman from Douglas (Mr. Estabrook), which destroys, to a certain extent, the whole character and principle which was involved in the first resolution, which is that it should be only a transcript, and only an abstract—we pass upon it not knowing the contents of the abstract, and certainly not the original journal, so that the object of the first resolution is gone, and we are expending a vast amount of money for adopting the amendment and knowing scarcely anything whatever in relation to the proceedings. It now takes the clerks until nearly twelve and one o'clock at night to make up these journals. If we are going to have this printed, or an abstract, it would take an additional clerk to prepare that journal to be printed the next morning. It would entail a vast amount of labor upon these clerks, or it would necessitate the immediate employment of other clerks, which I do not believe in on account of the expense. I am, therefore, opposed to the resolution.

Mr. NEWSOM. I understand the question to be on the resolution.

Mr. TOWLE. I do not understand that. I understood the amendment was simply that the printing of the journal should be under the direction of the Chairman of the Committee on Printing.

The PRESIDENT. That was the amendment.

Mr. MASON. I desire to enquire what the Chair stated the question was before the house.

The PRESIDENT. The motion of the gentleman from Douglas (Mr. Estabrook) was to commit the resolution to the Standing Committee.

Mr. MASON. Permit me to enquire if a motion to commit does not take precedence of the motion to amend?

The PRESIDENT. Yes sir, but I did not understand there was a motion to commit.

Mr. MASON. The gentleman from Douglas (Mr. Wakeley) made the motion to commit. He moved to commit the resolution to the Committee on Printing.

The PRESIDENT. I will read you what I have here. Mr. Estabrook moved to amend that it be done under the direction of the Committee on Printing.

Mr. MASON. I am not responsible for the notes of Mr. President. Mr. Wakeley moved to commit the resolution to the Committee on Printing. Afterward the gentleman from Douglas (Mr. Estabrook) moved to amend. I now enquire whether the question is not on the motion to commit.

The PRESIDENT. I did not understand the gentleman from Douglas (Mr. Wakeley) to make the motion to commit.

Mr. WAKELEY. My best recollection is that I did not make the motion. I suggested that it should be referred to the Committee on Printing for that purpose. I do not think I made a motion.

Mr. MASON. I seconded the motion and so understood it. I move to commit the whole subject to the Committee on Printing.

The motion was agreed to.

Mr. VIFQUAIN. I have a resolution.

The resolution was read by the Secretary as follows:

WHEREAS; It is dangerous to the safety of our institutions to allow Railroad monopolies to get control of all the roads in our State, and

WHEREAS; by the immense land grants given from our State by the Federal Government to the Union Pacific and B. & M. R. R., it is evident that said two corporations are in a fair way to control the traffic of this State, be it hereby

RESOLVED: That the Railroad Committee are requested to submit to this Convention, at their earliest convenience a section to be incorporated in our Constitution, specially calculated to reach these two giant corporations, and thereby save the welfare of our people in the future.

Mr. VIFQUAIN. I move the adoption of the resolution.

Mr. HASCALL. Mr. President, I claim it is a proposition which ought to be referred to the Committee on Railroads. I move its reference to that Committee.

The motion was agreed to.

Mr. NELIGH. Mr. President, I desire to offer a resolution.

The Secretary read the resolution as follows:

WHEREAS; That when we entered the Union of States our Constitution provided that the Legislature should consist of a Senate of thirteen members, and a House of Representatives of thirty members, with only a population of about forty thousand, and mostly confined to twenty counties, and

WHEREAS; We have now a population of about one hundred and forty thousand and distribution is about forty-two organized counties therefore

RESOLVED: That the Constitution be so amended that the Legislature consist of a Senate of not less than twenty-seven members and a House of Representatives not less than eighty-one members.

Mr. WAKELY. Mr. President, I move its reference to the Legislative Committee.

The motion was agreed to.

Mr. GRENELL. Mr. President, I beg leave to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That in case the Government of the United States shall at any time hereafter desire to remove the National Capitol to within this State the Legislature may cede to the United States, jurisdiction over any district not exceeding one hundred square miles, wherever the government of the United States may select, provided such grant shall take effect only on the removal of the National Capitol to such district.

Mr. GRENELL. I move it be referred to the Committee on Federal Relations.

Mr. WEAVER. I have a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Committee

on Revenue and Finance be requested to inquire into the expediency of inserting a clause into the Constitution, limiting taxes in the aggregate for county and State purposes to two per cent. on the assessed valuation of the property of the State.

Mr. WEAVER. Mr. President, I move the resolution be referred to the Committee on Revenue and Finance.

Motion agreed to.

Mr. BOYD. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED: That the Committee on Judiciary be and they are hereby instructed to report to this Convention, whether it is competent for this State, by its Constitution, to require railroads chartered by the General Government to have and maintain a public office in this State where transfers of stock shall be made and in which shall be kept for public inspection, books, in which shall be recorded the amount of capital stock subscribed and by whom; the names of the owners of its stock and the amounts owned by them respectively; the amount of stock paid in and by whom; the transfers of said stock; the amount of its assets and liabilities, and the name and place of the residence of officers. Also, whether such railroad companies shall be compelled to annually make a report, under oath, to the Auditor of Public Accounts, of all their acts and doings.

Mr. BOYD. Mr. President, I move the adoption of the resolution.

Motion agreed to.

Mr. MANDERSON. Mr. President, I desire to offer a resolution, which I move be referred to the Committee on Judiciary, without being read.

Motion agreed to.

The following is the resolution of Mr. Manderson.

RESOLVED: That the Committee of Judiciary be instructed to take into consideration the advisability of embodying the following Article in the Constitution, (filling the blanks in section 8) under the head of "Judicial Department."

ARTICLE.

JUDICIAL DEPARTMENT.

SECTION 1. The Judicial powers of the State shall be vested in one Supreme Court, Circuit Courts, Courts of Common Pleas, Probate Courts, Justices of the Peace, and such inferior Courts as the Legislature may from time to time establish.

Sec. 2. The Supreme Court shall consist of three (3) Judges, any two of which shall constitute a quorum, and shall hold at least two terms at the seat of Government of the State annually, and such other terms there and elsewhere as may be provided by law.

Sec. 3. The Supreme Judges shall be elected by the electors of the State at large, at a special election called for the purpose. Those first elected shall hold their office for three (3), six (6) and nine (9) years; the term of each respectively to be decided by lot, and after said election, one Judge shall be elected every three years. The judge having the shortest term to serve shall be Chief Justice during the remainder of his term of office.

Sec. 4. The Supreme Court shall have original jurisdiction in quo warranto, mandamus, habeas corpus, and such cases of impeachment as may be required to be tried before it, and such appellate jurisdiction as may be provided by law.

Sec. 5. From and after the adoption of this Constitution, the Judges of the Supreme Court, shall each receive a salary of $5,000.00 per annum, payable quarterly.

Sec. 6. The Supreme Court shall by

general rules, establish, modify and amend its practice, and may also make all rules that may be necessary for the exercise of its appellate jurisdiction, and have a general superintending control over all inferior courts and tribunals; shall appoint one reporter of its decisions, and one clerk, who shall hold their offices for nine years, subject to removal by the court.

Sec. 7. The State Circuit Court shall be divided into three (3) Judicial Circuits, in each of which the electors thereof shall elect one Circuit Judge, who shall hold his office for the term of six years and until his successor is qualified.

Sec. 8. The Counties of ———— shall constitute the 1st Judicial Circuit; the Counties of ———— the 2nd Judicial Circuit; and the Counties of ———— the 3rd Judicial Circuit.

Sec. 9. The three Circuit Court Judges shall constitute a quorum; they shall hold two terms each year, in each circuit, at such times and places as may be provided by law.

Sec. 10. The Circuit Courts shall have like original jurisdiction with the Supreme Court and such appellate jurisdiction as may be provided by law. It shall have jurisdiction by appeal in all cases in law, where the amount involved is $300.00 and over, when full security, in double the amount of the judgment and costs is given by the party appealing.

Sec. 11. The Circuit Judges shall each receive a salary of $4,000.00 per annum, payable quarterly.

Sec. 12. They shall appoint one clerk in each Judicial Circuit who shall hold his office for six (6) years, unless removed by them, and shall select one of their number as presiding Judge.

COMMON PLEAS COURT.

Sec. 13. The Common Pleas Court of the State shall consist in number of as many as it may require to give one to each 20,000 inhabitants of the State, and the Common Pleas Districts shall be as required by law; Provided that contiguous counties and compact territory shall comprise said districts; that the county of Douglas shall constitute one district and that they shall be bounded by county lines. No alteration or change of any District shall be made which will affect the tenure of office of any Common Pleas Judge.

Sec. 14. There shall be elected by the electors thereof, one Common Pleas Judge in each Common Pleas District, who shall hold his office for the term of four (4) years, and receive a salary of $3,000.00, payable quarterly.

Sec. 15. The original jurisdiction of the Common Pleas Courts shall extend to all matters, civil and criminal, to cases in equity and law, where the amount involved is over $100; and such appellate jurisdiction as may be provided by law.

Sec. 16. The number of terms and times and places of holding the Common Pleas Courts in the different counties forming the Common Pleas Districts shall be as provided by law.

Sec. 17. Each Common Pleas Court shall have one clerk; to hold his office for four (4) years; to be appointed by the judge thereof, and to be subject to his removal.

Sec. 18. The Common Pleas Judges of the State shall meet once in two years, to establish uniform rules of practice in their Courts and to modify the same.

Sec. 19. There shall be established in each county a Probate Court, which shall be a Court of Record, open at all times and holden by one Judge, elected by the voters of the county who shall hold his office for the term of three years and shall receive such compensation, payable out of the county Treasury or by fees, or both, as shall be provided by law, provided, however, that in no case shall the said compensation exceed $2,500.00.

Sec. 20. The Probate Court shall have jurisdiction in Probate and Testamentary matters, the appointment of administrators and guardians; the settlement of the accounts of executors, administrators and guardians; the issuing of marriage licences, and for the sale of land by executors, administrators and guardians, and the same jurisdiction as to the trial of civil cases as is provided herein for Justice of the Peace.

JUSTICE OF THE PEACE.

Sec. 21. There shall be six Justices of the peace in each county, who shall be elected by the electors of the county, and hold their office for three years and until their successors are qualified. The Legislature may increase the number of Justices in towns and cities, not to exceed one for each 5,000 inhabitants.

Sec. 22. Justices of the Peace shall have such civil and criminal jurisdiction in minor offences, and perform such duties as may be provided by law.

Sec. 23. They shall have original jurisdiction in all cases in law where the amount involved is $100 and under; and concurrent jurisdiction with the Probate and Common Pleas Courts where the sums involved in such causes is $300, and under.

Sec. 24. Judges of the Supreme, Circuit, Common Pleas, and Probate Courts shall be in-eligible to any other than the Judicial office, during their continuance therein; except that they serve, when lawfully elected as members of conventions to alter or revise the Constitution of the State. They shall receive no fees or perquisites other than as provided herein, and their salaries shall not be increased or diminished during the term for which they shall have been elected.

Sec. 25. Supreme, Circuit, and Common Pleas Judges shall be elected at a special election not to be held within sixty days of a general election.

Sec. 26. In case the office of any Judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the Governor until a successor is elected at a special election called for the purpose which election shall be so called within sixty days after such vacancy.

Sec. 27. Two-thirds of the members elected to each House of the Legislature may require the opinion of the Supreme Court upon important questions of Constitutional law.

Sec. 28. Judges may be removed from office by concurrent resolution of both Houses of the Legislature, if two-thirds of the members elected to each House, concur therein; but no such removal shall be made except upon complaint, the substance of which shall be entered upon the Journal, nor until the party charged shall have had notice thereof and an opportunity to be heard.

Sec. 29. All process, writs, and other proceedings shall run in the name of "The people of the State of Nebraska."

Sec. 30. All officers provided for in this Article shall respectively reside in the circuit, District, or county for which they may be elected, or *appointed.*

Mr. MAXWELL. Mr. President, I wish to offer, and I move its reference to the Committee on Judiciary, without being read.

Motion agreed to.

The following is the resolution of Mr. Maxwell.

ARTICLE.
JUDICIAL.

1st. The Judicial power of the State shall be vested in a Supreme Court, in District Courts, County

Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish.

2nd. The Supreme Court shall consist of at least three Judges, two of whom shall constitute a quorum, or to pronounce a decision. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, and such appellate jurisdiction as may be provided by law. It shall hold at least two terms in each year at the seat of government, and such other terms as may be provided by law. The Judges of the Supreme Court shall be elected by the electors of the State at large. The Judges of the Supreme Court shall immediately after the first election under this Constitution be classified by lot, so that one shall hold for two years, one for four years, and one for six years; and at all subsequent elections the terms of each of said Judges shall be for six years.

3rd. The State shall be divided into four Judicial districts, of which the counties of Otoe, Nemaha, Richardson, Pawnee and Johnson, shall constitute the first district. The counties of Cass, Saunders, Sarpy, and Douglas shall constitute the 2nd district; and the territory now embraced in the 3rd Judicial District and the counties of Butler, Lancaster, Gage, and the counties west thereof, and south of the Platte river, except that now embraced in the 3rd District shall constitute the 4th District. The Legislature may at any time, when the increase of business demands, by a vote of two-thirds of the members elected to each house increase the number of the Judicial Districts, not to exceed seven, and provide for the election of judges, but shall not so change the boundaries as to vacate the office of any judge thereof. That the judges of each of said district Courts shall be elected from, and be a resident of their respective districts.

4th. The County Court shall be a Court of Record, shall be holden by one judge, who shall be an attorney at law in each county in this State, and shall have civil jurisdiction in actions at law in the amount of five hundred dollars, and shall hold Court for the transaction of civil business on the 1st Mondays of January, April, July and October in each year, at which time a Jury shall be provided as required by law. The County Court shall have jurisdiction in Probate and testamentary matters; the appointment of administrators and guardians; the settlement of the accounts of executors, administrators, and guardians and such jurisdiction in habeas corpus, the issuing of marriage licenses, and for the sale of lands by executors, administrators and guardians as may be provided by law, that said Court shall be at all times for the above purposes. The judges of said Court shall be elected for three years.

5th. Three Justices of the Peace shall be elected in each township, precinct, or ward of the several counties of the State. Their term of office shall be three years. That immediately after the first election they shall be classified by lot so that one of said justices shall hold for one year, one for two years and one for three years and that at all elections thereafter all justices shall be elected for a term of three years and shall not have jurisdiction in any matter wherein the title or boundaries of land are in controversy, nor in actions of libel or slander, and shall have jurisdiction in actions on contract in the amount of two hundred dollars.

6th. In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the Governor until a successor is elected and qualified, and such successor shall be elected for the unexpired term at the next general election occuring after such vacancy.

7th. The judges of the Supreme

Court shall receive for their services the sum of three thousand dollars per annum, and the judges of the district courts shall receive for their services the sum of two thousand five hundred dollars per annum, and shall in addition be paid their necessary travelling expenses incurred in holding their several terms of Court, and not exceeding the sum of five hundred dollars in one year.

8th. The clerks of the several counties shall be clerks of the District Court of their respective counties, and the Supreme Court shall appoint suitable persons as clerk and reporters of the Supreme Court.

9th. Judges may be removed from office by impeachment, in which case the same proceedings shall be had as in the impeachment of Governor, and two-thirds of the Senate shall be required to find the party guilty.

The style of all process shall be "the People of the State of Nebraska."

The District Courts shall have original jurisdiction in all cases in law and equity and such appellate jurisdiction as is provided by law, and shall hold at least one term of court in each county in each year.

Mr. VIFQUAIN. Mr. President, I have a resolution to offer.

The Secretary read the resolution, as follows:

RESOLVED, That all lands heretofore not appropriated and belonging to the five hundred thousand acres of internal improvement lands given by the Federal Government to the State of Nebraska will be equally divided among the several counties of the State, and by them used for internal improvements in such counties, providing that no lands will be used by any county without submitting the same to a vote of its people under such rules as may be prescribed by the first session of the Legislature, after the adoption of the new Constitution.

Mr. VIFQUAIN. Mr. President, I move it be referred to the Committee on State Lands (other than School Lands.)

Motion agreed to.

Mr. NELIGH. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That for the encouragement of the establishing of manufactures in this State, the Constitution be so amended exempting all manufacturing companies from taxation by laws of this State for the term of six years.

Mr. NELIGH. Mr. President, I move to refer to Committee on Manufactures and Agriculture.

Motion agreed to.

Mr. BALLARD. Mr. President, I hope now there is a determination to go to work. We have established a bad precedent in coming here to hear the journal read, and filling in the morning hour with resolutions. I hope all have been presented that are wanted. The people are looking at us and are anxious to know what we are going to do; they are expecting a Constitution to be submitted to them, and we ought to work.

Mr. MYERS. Mr. President, I call the gentleman to order.

The PRESIDENT. The gentleman will not be permitted to speak unless he makes a motion, or leave is granted. ("Leave," "Leave.")

Mr. BALLARD. I thought I was in order. I say we have been here a number of days. We have done much it is true, but I think we might have done much more. I hope this body will go to work in earnest and get the reports; for the reason that these resolutions will perhaps be worked over again in Committee of the Whole. The sooner the Convention goes to work substantially the better. I want to get home some time next winter, We can go to work and "commence to grind," as the saying is, and get to the framing of the Constitution. This day week some of the gentlemen will want to go home, and, perhaps, an adjournment of ten days will be requested; and the result will be that we shall finish our work so near to the next election that the people will have scarcely any time to study the Constitution before they are called on to vote for it. I think we can do more, and I hope we shall.

Mr. MANDERSON. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

RESOLVED: That the compensation of the Sergeant-at-arms and Doorkeeper be fixed at $3.00 per day; that the compensation of the pages be $1.50 per day, and that they be permitted to draw their pay during the sitting of the Convention under proper warrant.

Mr. MANDERSON. I move, Mr. President, that the resolution be adopted.

Mr. PHILPOTT. Mr. President, I move to amend by saying that the Chaplain shall receive $3.00 per day.

The PRESIDENT. Gentlemen, the question is to amend.

Mr. TOWLE. Mr. President, I move to raise the pay of the pages to $2.

Mr. MANDERSON. I take those figures from what the last Legislature paid.

Mr. TOWLE. I hope the gentleman will not take the last Legislature as a precedent.

The motion, as amended, was agreed to.

Mr. BOYD. Mr. President, I wish to offer a resolution and move its adoption.

The Secretary read the resolution as follows:

WHEREAS: certain railroad corporations in this State, by virtue of the building of their roads, have become entitled to large tracts of the public domain, and although the title may not yet have passed from the General Government, said corporations are virtually the owners thereof, therefore

RESOLVED; That the Judiciary Committee be instructed to report to this Convention whether, in their opinion, we can, by the proposed Constitution, provide for the collection of taxes on said lands.

Resolution adopted.

Mr. WAKELEY. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the President of this Convention be authorized to employ what additional clerks may be necessary.

Mr. WAKELEY. I have been informed that some action of this kind is necessary, and I offer the resolution for that reason.

Mr. ESTABROOK. I move to amend, Mr. President, by inserting that "the Convention now proceed to the election of Engrossing and Enrolling Clerks." We are now about to report, from the different Committees, and their services will be required.

Mr. THOMAS. Mr. President, I would like to ask whether there is any Enrolling and Engrossing to be done at the present time.

Mr. ESTABROOK. I would say there is no Enrolling or Engrossing to be done at present. They can help the clerks we already have to get their papers in shape.

Mr. HASCALL. Mr. President, I would say, we will have work for an Engrossing clerk, but not for an Enrolling clerk until the Constitution is finally adopted. Then it will have to be enrolled and properly preserved.

Mr. KIRKPATRICK. I think, Mr. President, we ought not to employ officers until we have duties for them to perform.

Mr. TOWLE. It will be remembered by the House that, at the beginning of the session, I offered a resolution with regard to the employment of more clerks: and for various reasons, which the House thought proper to urge at that time, my resolution was rejected; and it was generally considered that all the work required by this Convention, outside of that done by the two secretaries, could be done by professional copyists, (of whom there are a number in this town) under the direction of the President. The Committees, I understand have agreed to do their own copying. There are a number of people here who would be glad to do copying by "piece work". I hope the resolution will not be adopted. I move we adjourn until 10 o'clock to-morrow morning.

Mr. GRENELL. Mr. President, It seems to me that this motion ought not to prevail at this time there is now———

Mr. TOWLE. Mr. President, I withdraw my motion.

Mr. HASCALL. Mr. President, the rules require that, each Article of the Constitution should be read a first and second time, before they are finally discussed in Committee of the Whole and we might put in some time perhaps in that way.

The PRESIDENT. I would say for the information of the gentleman from Douglas, there should be two more headings to our order of business, for "Bills on first Reading," and "Bills on second Reading."

Mr. ESTABROOK. I wish to offer a resolution, Mr. President.

The Secretary read the resolution as follows:

RESOLVED: That this Convention do now proceed to elect an Engrossing and Enrolling Clerk, who shall do such duties as shall be prescribed by the President.

The PRESIDENT. Is this offered as a substitute for the resolution of the gentleman from Douglas (Mr. Wakeley).

Mr. ESTABROOK. Yes, sir.

The PRESIDENT. Gentlemen, the question is upon the substitute.

Mr. TOWLE. Mr. President. I desire the ayes and nays.

Mr. CAMPBELL. Mr. President, I move to postpone until next Monday, for the reason that these clerks would have nothing to do until that time.

Mr. WAKELEY. I am informed by officers of this House that there is a necessity for additional clerical help in order to keep up the Journal.

Mr. GRENELL. Mr. President, I am in favor of employing more clerks. I am informed that the work cannot be done without overtaxing our present clerks.

Mr. KIRKPATRICK. I am satisfied the resolution of the gentleman from Douglas (Mr. Estabrook) is just, if there is additional clerical force needed, but I understand this is not the case.

Mr. ESTABROOK. It seems to me all the members are a little ostentatious of their parsimony, and I have my share of it no doubt. There seems to be a disposition to "save at the spiggot, and waste at the bung hole," but all I wish to know is, that the assistance asked is really needed, and I am satisfied it is. While I take this position, I will say I don't believe in these little outside arrangements, where somebody is to go and call in assistance here and there. If we are to have clerks here, let us know who they are. Hence I offer my substitute.

Mr. KIRKPATRICK. Mr. President, I would like to know if the gentleman applies his remarks to me, when he says members are disposed to "spend at the bung hole, and save at the spiggot." I think such remarks are entirely uncalled for, and out of place. I think it is evident we do not, at present, have work for Engrossing or Enrolling Clerks, and it would be imposing on them to set them at the ordinary work of journal clerks.

The PRESIDENT. The question is upon the postponement until Monday morning.

Mr. CAMPBELL. I am willing, Mr. President, if those clerks will state that they cannot get the work up from the adjournment tomorrow morning until Monday morning, to withdraw my motion.

Mr. ESTABROOK. I would like to ask the gentleman if he desires to have our clerks break one of the commandments, I forget the number. It is to keep the Sabbath.

Mr. WAKELEY. I move the gentleman be referred to the Committee on Education.

The PRESIDENT. The question is on the motion to postpone.

The Convention divided and the motion was agreed to.

Mr. GRAY. Mr. President, I have a resolution to offer.

Mr. ABBOTT. I move the Convention do now adjourn until to-morrow morning at ten o'clock.

Mr. MAJORS. Mr. President, I desire to ask leave of absence for my colleague, Mr. Tisdel.

Leave granted NEM. CON.

Mr. ABBOTT. Mr. President, I insist on my motion to adjourn.

Mr. MYERS. Mr .President, I arise to a point of order

The PRESIDENT. The gentleman from Douglas (Mr. Myers) will state his point of order.

Mr. MYERS. The gentleman from Dodge (Mr. Gray) had the floor when the gentleman from Hall (Mr. Abbott) made the motion. A motion to adjourn is not in order when a member has the floor.

The PRESIDENT. The motion to adjourn is not in order; The gentleman from Dodge (Mr. Gray) had the floor.

The Secretary read the resolution

of the gentleman from Dodge (Mr. Gray) as follows:

RESOLVED: That the Committee on State, County and Municipal Indebtedness, (No. 12) to whom was referred the resolution for an article of which a copy is hereby attached, be required to report the same back to this Convention by to-morrow.

"Mr. Gray offered a resolution that the following be incorporated into the Constitution and be submitted separately:

SECTION. 1. No County, City, Town, Township, Precinct or other municipality, shall ever become subscribers to the capital stock of any Railroad or private corporation, or make donations to, or loan its credit in aid of such corporation; PROVIDED, That the adoption, or rejection of this article, shall not affect in any way the question of the legality of the donations already made to Railroads or private corporations.

Mr. GRAY. Mr. President, I move the adoption of the resolution, Now the object I have in view, is this, the resolution which was offered, and which is attached to this resolution, and was referred to its appropriate Committee, is a resolution, which I desire to have reported back to this Convention for their action and if I can get a majority vote of this Convention in favor of it, to have it grafted into the Constitution as an independent article. I desire when it is reported back to have it printed and placed before the members, so that we may be prepared to consider it when we go into Committee of the Whole. How can we do this if this is lying in a dormant condition, before a Standing Committee? It has been there for two or three days already. I regretted to have to send it to a Committee at all, for I thought it would cause delay. I desire this Convention to establish some rule by which these resolutions will be reported back from the Committees to which they are referred. Therefore I hope the resolution may pass and prevail.

Mr. NELIGH. Mr. President, I move to amend the motion and to refer the resolution to the Committee on State, County and Municipal Indebtedness.

Mr. PHILPOTT. I call for the reading of the resolution.

The Secretary read the resolution again.

Mr. KIRKPATRICK. Mr. President, I think the amendment offered by the gentleman from Cuming (Mr. Neligh) does not facilitate the object of the motion.

Mr. NELIGH. Mr. President, I withdraw my motion.

Mr. HASCALL. Mr. President, I hold that the resolution itself is not proper, and it is ill timed. This matter has been referred to a Standing Committee and they require time to act upon it. It does not follow, because a resolution is referred to a Committee, that the same resolution be reported back to the Convention. I am not one who is prepared to say that these Standing Committees have yet had proper time to prepare their reports, but after they have had sufficient time to consider all the resolutions committed to them, I am in favor of requesting them to report not upon any *one* special resolution, but upon the whole matter referred to them. I am opposed to forcing any committee to report until they have had sufficient time to act upon the matter committed to them.

Mr. TOWLE. I move that we now adjourn until to-morrow morning at 10 o'clock.

Mr. McCANN. Mr. President, I wish to ask a question for information: Is there not a special order of business *for this afternoon* at 2 o'clock?

The PRESIDENT. There is not.

Mr. GRAY. Mr. President, the question to adjourn to a time certain I believe; is debatable. I trust this motion will not prevail until this resolution is passed; it will take but a short time to act upon this motion, and I hope the friends of my resolution will vote against the motion to adjourn.

Mr. BALLARD. Mr. President, we refused to adjourn yesterday until the regular order of business was gone through with, and I hope we will follow that rule. It is time for the members of this Convention to begin to make a record for themselves, I call for the "ayes" and "nays."

The Secretary proceeded to call the roll.

The result was announced, yeas 13, nays, 34 as follows:

YEAS.

Abbott,
Cassell,
Eaton,
Hascall,
Lake,
Myers,
Neligh,
Newsom,
Parchen,
Scofield,
Speice,
Stewart,
Towle,

NAYS.

Ballard,
Boyd,
Campbell,
Curtis,
Estabrook,
Gibbs,
Granger,
Grenell,
Gray,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Ley,
Lyon,
McCann,
Majors,
Mason,
Manderson,
Maxwell,
Moore,
Parker,
Philpott,
Price,
Reynolds,
Shaff,
Sprague,
Stevenson,
Thummel,
Thomas,
Vifquain,
Wakeley,
Weaver,
Wilson,

ABSENT OR NOT VOTING.

Griggs,
Robinson,
Tisdel,
Woolworth,
Mr. President,

Leave of Absence.

Mr. TOWLE. Mr. President, I wish to ask leave of absence for Mr. Parchen for one week.

Leave granted NEM. CON.

Mr. HASCALL. Mr. President, I move to lay the resolution on the table.

Mr. GRAY. Mr. President, I call for the yeas and nays.

The Secretary proceeded to call the roll.

The result was announced, yeas 22, nays 26 as follows:

NAYS.

Ballard,
Campbell,
Gibbs,
Granger,
Grenell,
Gray
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Majors,
Mason,
Maxwell,
Moore,
Newsom,
Parker,
Philpott,
Price,
Shaff,
Sprague,
Speice,
Thomas,
Vifquain,
Weaver,
Wilson,

YEAS.

Abbott,
Boyd,
Cassell,
Curtis,
Eaton,
Estabrook,
Hascall,
Lake,
Ley,
McCann,
Manderson,
Myers,
Neligh,
Parchen,
Reynolds,
Scofield,
Stevenson,
Stewart,
Thummel,
Towle,
Wakeley,

ABSENT OR NOT VOTING.

Griggs,
Robinson,
Tisdel,
Woolworth,
Mr. President,

Mr. GRAY. I now call for the yeas and nays upon the pasage of the resolution.

Mr. WAKELEY. Mr. President, I do not see the necessity or propriety of pressing this motion of the gentleman from Dodge (Mr. Gray). The resolution to which reference is made is a very important subject, it was referred to the appropriate Standing Committee for the purpose of consideration; it is now before that Committee for that puropse, and if there was any propriety in referring to that Committee there is eminent propriety in leaving it in the hands of that Committee until they have sufficiently considered the subject and are prepared to report back to this Convention. If the gentleman intends to suggest, by his resolution, that this Committee has been dilatory in the performance of their duty, that they are unduly delaying a report upon this subject, let him say so; or if he proposes to take it out of the hands of the Committee, let him say something to that effect. The effect of carrying this motion would be as I understand it to oblige this Committee to report tomorrow morning whether they do or do not recommend the passage of one particular proposition upon the subject referred to in that resolution. Now sir, the Committee may not see fit to report that resolution in the precise form in which is has been sent to that Committee; perhaps may conclude to report the resolution in that precise form and recommend that the proposition be embodied in the Constitution; they may come to the conclusion to report in favor of adopting the principle of that resolution, but in a somewhat modified form; and the Committee should have all the time it desires unless it is asking for an unreasonable time, to do its duty and report its conclusions to the Convention. As a member of that Committee I have to say that unless the Convention are prepared to act on that subject without any reference whatever to the views of the Committee, I think it is not only proper but due to the Committee itself, that they should have the needful time for taking action and preparing a report for this Convention. Again, Mr. President, I object to the passage of the resolution offered by the gentleman from Dodge (Mr. Gray) just now for a different reason. If the mover of any resolution which has been referred to a Standing Committee, if it be proper for him to offer a resolution and require the action of the House upon resolutions instructing a Committee what to do with that proposition, then every member of this Convention has the same right, and should be allowed the same opportunity. If every distinct proposition made by a member of this Convention and sent to a Committee is to be acted upon in Committee of the Whole, or separate and distinct propositions then sir there will be no need of subjects upon which the Committee of the Whole is to act. I understand that we started out upon this plan that all propositions relating to a particular subject be referred to an appropriate Standing Committee, having in charge an Article of the Constitution, into which it will be proper that a provision be inserted, and when all these propositions have been considered, and when the appropriate Standing Committee shall have made its report embracing the whole subject committed to them, then you will have one distinct matter to refer to the Committee of the Whole. You will have a report of the Standing Committee covering the whole field of inquiry, if you go into Committee of the Whole on the subject their report will be considered, their report properly will take the form of a proposed Article, or section or provision, and then, sir, it will be competent for any member of this Convention to move an amendment to any proposition of the Committee, but if every gentleman of this Convention, who has moved a resolution in regard to the frame of the Constitution, is to bring motions before the Convention from day to day instructing the Committee to report back their opinion upon his particular proposition, or to report that proposition back to the Convention with the recommendation that it pass or not pass, and all this with a view of sending that distinct proposition to the Committee of the Whole to be acted upon, I think it will take a very long time to dispose of the business of this Convention. Why not let this matter take the ordinary course. That Committee, in all probability will be ready to report at an early day. I speak as a member of the Committee not as Chairman. I do not think there is any necessity or any propriety in this unusual action in regard to one particular proposition which has gone to a Standing Committee. I do not know what will be gained by early action upon this subject. It is a very important subject; a subject which requires as much consideration as any one subject before the Convention in any particular. It should not be hastened; it should not be pressed urgently upon the Convention at an early period of its session. Such is my judgment.

Mr. LAKE. It seems to me this subject is just where it ought to be, in the hands of the Committee on State, County and Municipal Indebtedness. The action which is called for by the resolution of the gentleman from Dodge, it seems to me impugns the motives of this Committee; that they are not doing what they ought to do; that they are not acting with that promptitude they ought to do. It seems to me, Mr. President, no subject matter which has been referred to this Committee, by the resolution which the gentleman from Dodge (Mr. Gray) has, I understand, introduced, is one of very great moment, one which gentlemen of this Convention cannot properly act upon without due consideration; and when I look over the names of this Committee, and see who compose it, I am satisfied that in due time the report will be made upon that subject. I understand that the subject matter of this resolution as introduced and sent before this Committee, proposes to prohibit entirely any county or any Municipality whatever, to lend its aid to any internal improvement—an absolute prohibition. If that be the case, it is important that the gentlemen of the Committee have ample time to reflect and consider the whole subject matter, and determine whether or not that be best. We want the views of that Committee. If it is an appropriate Committee, it was sent there for the purpose of obtaining the views of that Committee, and until those views have been prepared and we have it on good authority, that they have not had time, we should not send to the Committee. Shall we take statements of the gentlemen on the floor who are interested in this matter, as is the gentleman from Dodge (Mr. Gray) ,or shall we take the statements of members of the Committee who say they have not had time sufficiently to consider the subject matter. We are fixing a time, and a short time indeed, for the Committee to report to-morrow I understand, I prefer that each one of these Committees shall have ample time to consider the subject matter of the questions referred to them. I feel, for one, that the Committee have not abused the privilege which is allowed in taking of the time which, in their judgment they shall deem best. There has been no abuse of time on the part of the Committee, and I am in favor of letting the matter rest in their hands until they report on the subject. I am opposed to the resolution of the gentleman from Dodge (Mr. Gray), on that ground; that it is not acting fairly with the Committee. If I was convinced they were acting unfairly with the gentleman's proposition, I would most certainly aid him in taking it from the Committee; but until it is, I am in favor of letting it remain where the action of the House has placed it.

Mr. KIRKPATRICK. I take it that no reflection was meant on the Committee, but this is rather an unusual course. When a gentleman offers a resolution it comes into the House; it is a House resolution then, and the House refers it to a Standing Committee. I admit the House has control over the Committee and can order from the Committee what it has ordered to a Committee. I have no right, nor am I disposed to communicate to gentlemen the views of the members of the Committee; nor have I a right to discuss in this House, the propositions submitted to the Committee. I have no right to enter into the merits of the question now before the House, nor am I disposed to do so. I am not disposed to ask the indulgence of this House, but I will call attention to the fact that members of this Committee are members of other Committees. I am very tired, with attending to my appointments; but I will state that I think the Committee is not ready to report the resolution back to this House. In due time, sir, the resolutions referred to this Committee will doubtless come back to the House. I do not know what recommendations will accompany them. I think the gentleman will oblige the Committee by simply withdrawing the resolution for the time being, and when the Committee come to it, it will deliberate what it can do and make an honest report, whether it meets the concurrence of the gentleman or not.

Mr. GRAY. With the leave of my second, after hearing the explanation of the Chairman of that Committee (Judge Lake) to which was referred the Article, I will, for the present, withdraw my resolution.

Mr. Manderson, Judge Lake and several others objected.

Mr. MANDERSON. I move the consideration of the question be indefinitely postponed.

Division demanded.

Mr. MASON. I move the gentleman from Dodge (Mr. Gray), have leave to withdraw his resolution.

Mr. HASCALL. I call the gentleman from Otoe to order.

Mr. MASON. The request of the gentleman from Dodge to withdraw was first before this House.

Mr. MANDERSON. It was not a resolution to withdraw. The question is upon the indefinite postponement of the motion.

Mr. GRAY. I intended it as a motion.

Mr. PARKER. Would an amendment to his motion be in order?

The PRESIDENT. There is nothing in order. The question is upon the postponement of the consideration of the resolution.

The ayes and nays being demanded the Secretary proceeded to call the roll with the following result—ayes 19; nays 21—as follows:

AYES.

Abbott,
Boyd,
Curtis,
Eaton,
Estabrook,
Hascall,
Lake,
Ley,
Manderson,
Myers,
Neligh,
Reynolds,
Scofield,
Shaff,
Stevenson,
Thummel,
Towle,
Wakeley,
Weaver,

NAYS.

Ballard,
Campbell,
Cassell,
Gibbs,
Granger,
Grenell,
Gray,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
McCann,
Majors,
Mason,
Maxwell,
Moore,
Newsom,
Parker,
Philpott,
Price,
Sprague,
Speice,
Stewart,
Thomas,
Vifquain,

ABSENT.

Griggs,
Parchen,
Robinson,
Woolworth,

EXCUSED.

Wilson,

The PRESIDENT. Nineteen gentlemen having voted in the affirmative, and 26 in the negative, the motion is lost.

Mr. MASON. Mr. President, I move that the gentleman from Dodge (Mr. Gray) have leave to withdraw.

Motion agreed to.

Adjournment.

Mr. CASSELL. Mr. President, I move to adjourn until to-morrow morning at ten o'clock.

Resolutions Again.

Mr. ESTABROOK. Mr. President, I have a little document here, which

I would like to read.

("Leave" "Leave.")

Mr. ESTABROOK. (reading)

RESOLVED: That the Secretary of State cause a board to be placed before the door of this room, whereon notices of the meetings of Committees be posted.

Mr. ESTABROOK. Mr. President I move its adoption.

Motion agreed to.

Leave of Absence.

Mr. MASON. Mr. President, I ask leave of absence for myself until Monday at ten o'clock.

Leave granted.

Adjournment Again.

The PRESIDENT. Gentlemen, the question is upon the motion to adjourn ~~until~~ to-morrow morning at ten o'clock.

The motion was agreed to.

So the Convention (at twelve o'clock and twenty-three minutes) adjourned.

TENTH DAY.

Saturday, June 24, 1871.

The Convention met at ten o'clock a. m. and was called to order by the President.

Prayer.

Prayer was offered by the Rev. L. B. Fifield, of Lincoln, as follows:

Oh God, the Lord, be Thou the strength of our salvation. In this high place, may Thy favor make here known the securities of wisdom; here may best learning pay homage to best law; here may the largest experience ask after the wise old way; here may this Convention minister unto the people according to the grace of God's good will to men. Amen.

Reading of the Journal.

The Journal of last day's proceedings was read and approved.

Unfinished Business.

The Secretary read the following resolution from Friday's Journal.

RESOLVED: That the Sergeant-at-arms be ordered to make out and have printed for the use of this Convention two hundred copies of an accurate statement of the name, age, occupation, place of birth, postoffice and whether married or single, of the delegates and officials of this Convention.

The resolution was not agreed to.

Report of Committee on Rights of Suffrage.

Mr. MAXWELL. Mr. President, I beg leave to submit a report from the Committee on Rights of Suffrage.

Mr. LAKE. Mr. President, This I understand is a proposed Article to the new Constitution. I move that 200 copies be printed for the use of the members before any further consideration of it. And I move that the reading of it be waived.

Motion agreed to.

The following is the report:

Mr. PRESIDENT: Your Committee on the Rights of Suffrage report the following Article of the proposed Constitution, and respectfully recommend that the same be adopted by the Convention.

SAMUEL MAXWELL,
Chairman,
Committee Rights of Suffrage.

Section 1. Every male person of the age of twenty-one or upwards, belonging to either of the following classes who shall have resided in the State, county, precinct and ward for the time provided by law shall be an elector.

First, Citizens of the United States.

Second, Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.

Sec. 2. The Legislature may extend by law, the right of suffrage to persons not herein enumerated but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all votes cast on that question at such election.

Sec. 3. No person under guardianship, non compos mentis or insane, shall be qualified to vote, nor shall any person convicted of treason or felony unless restored to civil rights.

Sec. 4. No elector shall be deemed to have lost his residence in the State by reason of his absence on business of the United States, of this State, or in the military or naval service of the United States.

Sec. 5. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed therein.

Sec. 6. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and going to and returning from the same. And no elector shall be obliged to do military duty on the days of election, except in time of war or public danger.

Sec. 7. All votes shall be by ballot.

Mr. KIRKPATRICK. Mr. President, I will say that the Committee on State, County and Municipal Indebtedness, expect to be able to report perhaps on Tuesday morning.

Resolutions.

Mr. SCOFIELD. Mr. President, I have a resolution to offer, and I move its reference to the Judiciary Committee.

The Secretary read the resolution as follows:

RESOLVED: That the State shall be divided into five Judicial districts and until otherwise provided by law they shall be as follows:

First District. Richardson, Nemaha, Johnson, Pawnee, Gage, Saline, Jefferson.

Second District. Otoe, Cass, Lancaster, Saunders, Seward, Butler.

Third District. Douglas, Sarpy.

Fourth District. Washington, Burt, Dodge, Cuming, Colfax, Stanton, Platte, Madison, Pierce, Wayne, Blackbird, Dakota, Dixon, Cedar, L' eau-qui Court, and the counties lying west of L'eau-qui Court, Pierce and Madison.

Fifth District. Boone, Polk, York, Fillmore, Thayer, Nuckolls, Clay, Hamilton, Merrick, Hall, Howard, Greeley, Valley, Sherman, Buffalo, Adams, Kearney, Webster, Franklin, Lincoln and the counties lying west of Lincoln, Buffalo, Sherman, and Valley.

The boundaries of the district may be changed at the session of the Legislature next preceding the election of judges therein and at no other time; but whenever such alterations shall be made, the district shall be composed of contiguous counties in as nearly compact form as circumstances will permit. The alteration of the districts shall not affect the tenure of office of any judge.

The resolution was referred to the Committee on Judiciary.

Mr. MANDERSON. Mr. President, I desire to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Committee on Legislative Apportionment, be instructed to report on the advisability of incorporating the following provision in the new Constitution.

Section. —The number of Senators shall be 19 and the number of Representatives shall be 57; which number may be increased every five years by the Legislature, and shall be apportioned according to the Federal, or State census last preceding such apportionment; provided however, that any organized county without direct representation may, upon application through its county commissioners, to the Governor of the State, procure by him the appointment of a board of three (3) census takers, whose duty it shall be, at the expense of the county, to take the census of the county and under oath return the same to the Governor, and if it appears that the population of said county is equal to the number required for one member of the lower House of the Legislature then such county shall be entitled to one member thereof.

Mr. MANDERSON. Mr. President, I move its reference to the Committee on Legislative Apportionment.

Motion agreed to.

Mr. NELIGH. Mr. President, I offer a resolution.

The Secretary read the resolution as follows:

WHEREAS; The State of Nebraska has exhibited a commendable liberality in the cause of Education in a most munificent manner, by her common free school law, and that the only consideration that the State expects in return for the burden of heavy taxation which the support of the free schools imposes upon her people, is the repression of crime and the moral advancement of human progress: Therefore be it

RESOLVED: That while it takes just as much of the people's money, and costs equally as much to carry on our common free schools whether children attend or not, parents and others who have children under their care and control of sufficient age for scholars, should be compelled by law, to send all such children to the common schools.

Mr. NELIGH. Mr. President, I, move it be referred to the Committee on Education, School Funds and Lands.

Motion agreed to.

Mr. CAMPBELL. Mr. President, I have my report ready.

The Secretary read the report as follows:

Mr. President, The Committee on Printing and Binding have had under consideration the resolution ordering the daily printing of the Journal, would beg leave to report, that the cost would be about thirty dollars per day, also that the labor of the clerks would be twice as much as it is at present.

Therefore the Committee recommend the resolution do not pass.

J. C. CAMPBELL,
Chairman.

Mr. LAKE. Mr. President, I move the adoption of the report.

Mr. PHILPOTT. Mr. President, I call for the reading of the report again.

The Secretary reads the report again, and the motion to adopt it, is agreed to NEM. CON.

Mr. HINMAN. Mr. President, I offer a resolution, and ask that it be referred to the Committee on Suffrage.

The Secretary tries to read the resolution but fails, and hands it to the Assistant Secretary, who is also unable to decipher it.

Mr. LAKE. Mr. President, I move the resolution be referred to the gentleman who wrote it (Mr. Hinman), he may be able to read it.

Mr. HINMAN. I would prefer to have the Secretary read it.

Mr. MANDERSON. I move it be referred to the Committee on Education.

Mr. CAMPBELL. I think it should not be referred to that Committee, Mr. President, for if the gentleman who wrote it (Mr. Hinman) cannot read it, now that it has got cold, I am sure the Committee on Education cannot.

Mr. Hinman reads the resolution, as follows:

WHEREAS; A division of labor and occupation between the opposite sexes has, during the existence of mankind proven the most harmonious and beneficial and should be kept up: and

WHEREAS; it is charged by woman (suffragists) that drunkenness, debauchery, fraud, and all grades of vice and villany, are the rule of the day owing to the corruption of the male sex, and various agitators are desirous of changing our long used but fogish system now existing—of males doing the outside work and principal business connected with making a livelihood, and laws to govern in transactions connected therewith, the following resolutions are offered with a request that they be referred to the Committee on Suffrage, for their consideration as to the advisability of having the same engrafted into the Constitution to be submitted to the people.

RESOLVED. That the elective franchise shall be conferred on females alone.

2nd. That the word "male" shall be stricken from the Constitution wherever the same occurs, and the word "female" substituted therefor.

3rd. That males shall no longer hold office, nor exercise the elective franchise in this State.

4th. That people, as near as practicable shall conform themselves to the following rules:

1st. That females shall hereafter fill the occupations heretofore usually occupied by men or males in farming, mechanical and manufacturing employments; constructing and projecting and running railroads and other internal improvements; keeping hotels and livery stables and hostlers and all other of the afore said occupations not herein enumerated so as to fit her for more intelligently making the laws connected with the conduct of such occupations.

2nd. That the males shall hereafter exercise and fill the occupations and employments heretofore usually filled by women, such as nursing and the usual household duties of females together with running sewing societies, tea parties, and all other employments of females not herein enumerated so as to properly fit him for both a useful and ornamental person in society.

5th. RESOLVED: That the Legislature shall make such laws: both penal and civil as will most effectually carry out the provisions of resolution 4 and to compel the different sexes to conform themselves to the provisions therein contained and more especially providing for the infliction of heavy penalties wherever there is any continued and intentionally obstinate violation of the same.

Mr. NEWSOM. I move that we have the resolution read again. I take pleasure in saying that it has been well read (laughter).

Mr. ESTABROOK. Mr. President, I believe that it is according to our rules that it be read a first and second time, (laughter).

Mr. LAKE. Mr. President I move that it be read again.

Mr. HINMAN. Mr. President, I believe the reading of the resolution again is not in order, I ask that it be referred.

Mr. HASCALL. Mr. President, I move to strike out the resolution entirely, leaving the word "Whereas", only. (laughter)

The PRESIDENT. The question to commit has preference. The motion to commit was agreed to NEM. CON.

Mr. SCOFIELD. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Committee on Rights of Suffrage be instructed to inquire into the expediency of reporting a Constitutional provision permanently excluding from the right of elective franchise all persons who may be convicted by a court of record, of having money or other valuable thing to influence or reward their vote, and to make the offence, with or without conviction, a cause of challenge at the polls.

Referred to Committee on Rights of Suffrage.

Leave of Absence.

Mr. GRENELL. Mr. President, I desire leave of absence until Tuesday at 2 o'clock.

Leave granted NEM. CON.

Resolutions Again.

Mr. NEWSOM. Mr. President, the Auditor's report in reply to a resolution to furnish the Convention a statement showing the outstanding indebtedness of the State; he shows, among other things, that the "Annual expenses on general fund $200,000." I do not understand what this means and I desire to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: that the Auditor of State be requested to explain that part of his report showing the indebtedness of the State, so as to show in general terms what the "Annual expenses on General Fund" means, whether it means the annual general expenses of the State, and if so, how and under what heads they occur.

Mr. NEWSOM. I move the adoption of the resolution.

Mr. HASCALL. Mr. President, I see no use of adopting this resolution. The Auditor means by that, the appropriations made by the last Legislature for the annual expenses of, and to be paid out of the General Fund. You will find the items in the appropriation bill. I think that statement is clear and concise.

Mr. KIRKPATRICK. Mr. President, I am of the opinion of the gentleman from Otoe, (Mr. NEWSOM) that this statement is not full enough. The Auditor is requested to make a report of the outstanding indebtedness of the State unpaid at this date. Now can the appropriation made by the Legislature be the outstanding indebtedness of the State. Are the calculated expenditures for the next year the State indebtedness?

Mr. LAKE. Mr. President. The annual expenses on the General Fund here must have reference to the appropriations of the last Legislature. They cannot certainly refer to those that have been paid. If this resolution was adopted all the Auditor could do would be to refer to the appropriation of the last Legislature and give the substance of that appropriation. This can be found out more readily by a resort to the Secretary of the State; much more readily than to resort to the Auditor, he has undoubtedly grouped the whole bill and found the amount to be $200,000. The reason why I think he has done this is because under the head of resources he has given the "delinquent General Fund taxes." It seems to me it is plain enough, unless you desire to know the precise items which go to make up this appropriation of the Legislature which foots out $200,000.

Mr. McCANN. Mr. President, it will be borne in mind that the fiscal year closes on the first of November of the present year. If the whole appropriation, made by the Legislature is meant it must be for two years; but I think this $200,000 is the expenses of this year, and the resources from which this is to be met is the delinquent general taxes. Before the departure of the Treasurer the other day in his office, he stated to me that one quarter of a million was a fair estimate of that tax, and I think that is so. I think this report is all that was asked for by the resolution; therefore I do not think it is necessary to refer this back to the Auditor unless you wish to know the items which make up this $200,000.

Mr. NEWSOM. Mr. President. The reason I introduced this resolution was simply this, I asked several gentlemen what that item meant and none of them could tell me, and I suggested that there was nothing in the report of the Auditor from which any gentleman can tell what that is. The gentleman from Douglas says he supposes it is the appropriation made by the last Legislature. I suppose so too, but I do not know it, nor any other gentleman in the house so far as I can learn. If the last Legislature made that amount of an appropriation, I would like to know it, and the items for which it was made and how it is distributed throughout the State.

Mr. KIRKPATRICK. Mr. President, the gentleman from Otoe, (Mr. McCann) says that this amount is necessary to run the expenses until the end of the fiscal year the first of November. I think the appropriation was made for two years and not for one, as the gentleman states, but can that be the sense of this $200,000 item? The report asked for was the indebtedness of the State outstanding and unpaid at this date. Can this appropriation be in any sense of the word the information asked for by this resolution; I think not sir. That information is not ascertained from this report. I will state sir, that your Committee cannot fix the limit of the State indebtedness for the future unless they have some idea of what that indebtedness has been. If this covers the outstanding indebtedness of the State, your Committee on State, County and Municipal Indebtedness and this Convention also, wants to understand it.

Unless this matter can be most satisfactorily explained, I am for the adoption of the resolution of the gentleman from Otoe (Mr. Newsom), I am not particular where the information comes from; if the Auditor is not the proper source of information, I hope it will be asked for from some other source.

Mr. HASCALL. Mr. President, I think this statement is perfectly clear, and as clear as a statement could be made, in speaking of outstanding indebtedness, he says "Outstanding warrants (General Fund) $130,000, outstanding warrants (Building Fund) $40,000." It is very plain, the appropriation is very plain, and in that instance, warrants have been drawn. The Legislature may make appropriations for two years which they do, and the year, as has been stated by the gentleman from Otoe, (Mr. McCann) terminates at a certain period and there is no notice taken of the fractional part. We have a certain period in the year, when it commences and ends, the latter item the gentleman speaks of is "Annual expenses on General Fund $200,000." It does not say for "two years" but "Annual". Gentlemen are supposed to take notice of the law, and the laws making these appropriations are accessible to every one. They are kept in the Secretary's office. It is very easy to enumerate these expenses for this year. $15,000 was appropriated for this Convention; money was appropriated for the Insane Asylum; moneys were appropriated for the Normal School; moneys were appropriated for the Deaf and Dumb Institute; moneys were appropriated for the keeping of the Penitentiary convicts. These appropriations are made for the present year, and the annual expenses are according to the appropriations. Warrants may be drawn any time—they are liable to be drawn any moment. Whenever a person presents his claim, if correct, he draws his warrant. Consequently this is as well defined as the Auditor could make it; any further explanation would certainly be useless, I am therefore opposed to the adoption of a resolution of that kind.

Mr. LAKE. Mr. President, on the assurance of the members of the Committee who have the subject under consideration it seems to require the information asked. If it be thought the source applied to is the proper one for obtaining this information, I should be in favor of the resolution. It may be that it is the proper source and the Secretary of State is not the proper person.

Mr. KIRKPATRICK. I was instructed to seek this information in the office of the Auditor.

Mr. LAKE. I think perhaps, Mr. President, it would do the members of this Convention good, to see what has been done with this money. Upon reflection I am inclined to think it will. When we see our annual expenses footing up $200,000 it is somewhat astonishing to me to say the least. I am inclined to think it best that the members of this Convention should be put in possession of the desired information. I shall therefore support the resolution, if this is the proper source to apply to.

Mr. McCANN. Mr. President, I sincerely trust that the information may come before the Convention, for we shall soon be called upon to consider the financial issues of the State; and I hope all information gentlemen can avail themselves of, will be obtained. I suggest if the resolution is to refer to the Auditor that it may go to the Auditor. Any information that may be in the possession of the Auditor and not to be obtained from his office, can be obtained from the Secretary of State and Treasurer.

Mr. NEWSOM. As to the propriety of the resolution going to the Auditor, the way I understand the working of our State Government is this; the Auditor enters on his books every appropriation.

Mr. HASCALL. I correct the gentleman, only when the warrant is drawn.

Mr. NEWSOM. I do not accept the correction because if the Auditor does not have the information, I would ask when is he to stop auditing and issuing warrants? He must have every appropriation on his books, and when accounts come in to him he must audit them in proportion to the amount appropriated by the Legislature, otherwise you make the Auditor of this State a disburser of the public money at leisure, not according to law. You see the reason he must know what the appropriations are. He does know and for what purpose.

The PRESIDENT. Gentlemen, the question is upon the motion of Mr. Newsom.

The motion was agreed to.

Adjournment.

Mr. CAMPBELL. Mr. President, I move that when the Convention adjourns it adjourn until Monday at two o'clock.

Mr. BALLARD. I offer an amendment, and say ten o'clock Monday.

The PRESIDENT. The rule says the longest time shall be put first, so that the question put will be on the motion of the gentleman from Otoe (Mr. Campbell).

Mr. BALLARD. I call for the ayes and nays.

The Secretary proceeded to call the roll. The result was announced—"yeas" 27, "nays" 17, as follows:

AYES.

Abbott,
Boyd,
Campbell,
Estabrook,
Grenell,
Griggs,
Hascall,
Kenaston,
Kilburn,
Lake,
Ley,
McCann,
Majors,
Manderson,
Maxwell,
Newsom,
Philpott,
Reynolds,
Scofield,
Sprague,
Stevenson,
Thummel,
Towle,
Vifquain,
Wakeley,
Weaver,
Mr. President.

NAYS—17.

Ballard,
Cassell,
Curtis,
Gibbs,
Granger,
Gray,
Hinman,
Kirkpatrick,
Lyon,
Moore,
Parker,
Price,
Robinson,
Shaff,
Speice,
Stewart,
Thomas,

ABSENT AND NOT VOTING.

Eaton,
Mason,
Myers,
Neligh,
Parchen,
Tisdel,
Wilson,
Woolworth.

Leave of Absence.

Mr. THOMAS. Mr. President, I desire to ask leave of absence for Mr. Majors until two o'clock Wednesday.

Leave of absence granted NEM. CON.

Mr. GRENELL. I move the Convention now adjourn.

The motion was agreed to and the Convention (at eleven o'clock) adjourned.

ELEVENTH DAY.

Monday, June 26, 1871.

The Convention was called to order at two o'clock p. m. by the President.

Prayer.

Prayer was made by the Chaplain to the Convention as follows:

Almighty and allwise God, we acknowledge our dependence upon Thee as we enter upon the duties of another week. We pray we may have the love of God in our hearts and his blessings upon us. May it please Thee to keep our hearts and minds. These blessings we ask through Jesus Christ our Lord. Amen.

Reading of The Journal.

The Secretary read the Journal of the last days proceedings.

Leave of Absence.

Mr. WOOLWORTH. Mr. President. I ask leave of absence until to-morrow morning for Mr. Lake.

Leave granted.

Mr. NEWSOM. Mr. President. I ask leave of absence until to-morrow. I understand one of his children is sick.

Leave granted.

Unfinished Business.

The Secretary read from the Journal of Saturday as follows:

By Mr. WAKELEY.

RESOLVED: That the President of the Convention be authorized to employ any additional clerks which may be necessary.

To which Mr. ESTABROOK offered the following substitute:

RESOLVED: That the Convention do now proceed to elect an Engrossing and Enrolling clerk, who shall do such duties as shall be prescribed by the President.

On motion of Mr. Campbell the whole subject was postponed until Monday next.

The PRESIDENT. Gentlemen, the question is upon the Substitute.

Mr. THOMAS. Mr. President, I would like to hear the substitute read.

The substitute is read by the Secretary again.

The PRESIDENT. The question is upon the passage of the substitute.

Mr. HASCALL. Mr. President, I call for the reading of the substitute again. I did not hear it distinctly.

The PRESIDENT. The Secretary will read the resolution and also the substitute, again.

The Secretary reads the resolution of Mr. Wakeley, and the substitute offered by Mr. Estabrook.

The PRESIDENT. I will ask the *gentleman from Douglas* (Mr. Estabrook) whether Mr. Wakeley consented to take the substitute.

Mr. ESTABROOK. No sir.

Mr. TOWLE. Mr. President. As I understand the question now before the House is this. I understand that if we vote aye now, we vote to immediately proceed to the election of Engrossing and Enrolling clerks.

The PRESIDENT. Yes sir.

Mr. TOWLE. This subject was well discussed last week, and it seems to me there is but little for these clerks to do; there will be nothing for an Enrolling clerk to do until the Constitution is finally adopted. I am informed by gentlemen who know that there is no necessity for these clerks at this time. That all that is necessary is an assistant clerk for our present clerks. I don't know what writing there is for an Engrossing clerk to do. The Committees are all doing their own writing, the probability is that all the reports to this Convention will be drawn up and Engrossed by the Chairman of the Committees themselves. For myself I am willing, I am willing to do all the writing connected with the Committees I am on. On Friday, we will adjourn probably for ten days, and the pay of the clerks will go on. I am in favor of the original resolution of Judge Wakeley—that the President employ such clerks as are needed from day to day.

Mr. ESTABROOK. Mr. President, that this Convention will need sometime during its progress, clerks by whatever name you wish to call them, to do the Engrossing and Enrolling for this Convention there is no doubt. The duties of the Engrossing clerk will begin as soon as bills commence to be passed upon. My object is to save expense. Now if you elect these clerks they can perform duties as assistants and whenever you want Engrossing or Enrolling done you have your clerks ready for those duties. If these clerks are appointed under this order the President can assign them duties as assistants until such time as they are needed as Engrossing and Enrolling clerks and so we can save the expense of additional clerks. The duties are not accurately described any where, for Enrolling and Engrossing clerks, and while there is no other duties, the President can indicate that they should assist the present clerks.

Mr. HINMAN. Mr. President, I understand these clerks have to work until 12 o'clock at night and I don't think this Convention should ask any men to work through the whole day and half of the night for three dollars. I don't think our clerks can stand up under this work and I think it would be economy to give them necessary assistance.

Mr. GRIGGS. Mr. President, I would be willing that the President of this Convention should employ such clerical assistance as may be necessary but I am not willing to employ an Enrolling and Engrossing clerk at this time.

Mr. TOWLE. Mr. President, I move that the further consideration of the substitute be postponed until two weeks from to-morrow.

The motion to postpone was agreed to.

The PRESIDENT. The question now is upon the passage of the original resolution.

The Convention divided and the resolution was agreed to.

Reports from Standing Committees.

Mr. MYERS. Mr. President, The Legislative Committee have instructed me to submit the following report.

Mr. STEWART. Mr. President, I move that 200 copies of the report be ordered printed for the use of the Convention.

Mr. MYERS. Mr. President, I desire to have the report read the first time.

Mr. WOOLWORTH. Mr. President, as the report will be printed and furnished to each member I would object to the reading now to save time.

Mr. MYERS. Mr. President, I must insist upon the observance of the rule, that when an Article is presented it must be read the first time.

By request Mr. Myers read the report as follows:

MR. PRESIDENT:

Your Committee on the Legislative department present the following report:

That they have considered the various propositions submitted to them by the Convention in reference to this portion of the State Constitution, and respectfully recommend the following:

1. Legislative—Senators and Members.
2. Enacting Clause and Bills.
3. Enumeration and Apportionment.
4. Election of Senators.
5-6. Legislative Districts.
7. Who are Eligible.
8. Senatorial Classes.
9. Legislative officers and Contested Elections.
10. Disqualifications of Senators and Members.
11. Disqualification for office.
12. Pay and mileage of members of the Legislature.
13. Persons ineligible as members of the Legislature.
14. Crime 'a disqualification.
15. Impeachment.
16. Impeachable officers.
17. Oath of Office.
18. Bills for Governor—Objections.
19. Concurrent orders and resolution.
20. Appropriation Bills to Originate in the House of Representatives.
21. Salt Lands vested forever in the State.
22. Quorum for each House.
23. Senate and House may expel.
24. Journal and manner of voting.
25. Freedom of debate.
26. Stationery and printing.
27. Organizing House of Representatives.
28. Passage and signing of Bills.
29. Indebtedness due the State.
30—31—32. Bribery.
33. Privileges of Senators and Members.
34. Divorce.
35. Vacancies.
36. Revenue.
37. Vice and Immorality.
38. Public money and Appropriations.
39. Payment of money; statement of expenses.
40. Ordinary expenses; casual deficits; appropriations limited.
41. Extra Compensation or Allowance.
42. Public credit not loaned.
43. Fuel, stationery and printing.
44. State not to be sued.
45. Terms of office not extended.
46. Concerning roads—public and private.
47. Draining and ditching.
48. Homestead and Exemption Laws.

ARTICLE II.—LEGISLATIVE.

Legislative Authority and Election.

¶. 1. The Legislative authority of the State shall be vested in the Senate and House of Representatives, both to be elected by the people. The Senate shall not exceed thirty-three Senators, nor the House of Representatives more than one hundred members. The Representatives shall be chosen annually, by the citizens of each county respectively, on the Tuesday succeeding the first Monday in November. Senators shall be elected for the term of three years, and representatives for the term of one year from the day next after their general election.

Enacting Clause.

¶. 2. The enacting clause of all bills shall be: "Be it enacted by the legislature of the State of Nebraska;" and no law shall be enacted except by bill.

No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal.

No bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed plainly and clearly in the title.

Enumeration and Apportionment.

¶. 3. An enumeration of the inhabitants of the state shall be taken under the direction of the legislature in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter, and the districts shall be so altered by the legislature at the first session after the return of every enumeration that each senatorial district shall contain, as nearly as may be, an equal number of inhabitants excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district.

The members of the house of representatives shall be apportioned among the several counties of the state by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens and Indians not taxed, and shall be chosen by districts.

The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature and apportioned among the several counties according to the number of inhabitants in each.

Election of Senators.

¶. 4. The senators shall be chosen for three years, by the citizens of the several senatorial districts, at the same time, in the same manner, and at the same place, where they shall vote for representatives.

¶. 5. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the districts formed as hereinafter directed, according to the number of inhabitants in each as shown by the United States or other enumeration, and shall never be less than one-fourth nor greater than one-third of the number of representatives.

¶. 6. The senators shall be chosen in districts to be formed by the legislature each district containing such a number of inhabitants as shall be entitled to elect not more than three senators. When a district shall be composed of two or more counties they shall be adjoining. No city or county shall be divided in forming a district.

Who are Eligible.

¶. 7. No person shall be a senator who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the state three years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state, and no person elected as aforesaid, shall hold said office after he shall have removed from such district.

Senatorial Classes.

¶. 8. Immediately after the senators shall be assembled in consequence of the first election, subsequent to the first enumeration, they shall be divided by lot, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year.

Time of Meeting.

¶. 9. The general assembly shall meet in the capitol on the first Tuesday of January in every year, unless sooner convened by the governor.

Legislative Officers and Contested Elections.

¶. 10. Each house shall choose its president and speaker, and other officers. Each house shall judge of the qualifications of its members. Contested elections shall be determined by a committee to be selected, formed and regulate in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a less number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members, in such manner and under such penalties as may be provided.

Disqualification of Senators and Members.

¶. 11. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature.

And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States his acceptance thereof shall vacate his seat.

Disqualification for Office.

¶. 12. No member of the legislature shall receive any civil appointment within this state, or to the senate of the United States, from the governor, the governor and senate, or from the legislature, during the time for which he shall have been elected; and all such appointments, and all votes given for any such member for any such office or appointment, shall be void.

Pay and Mileage of Members of the Legislature.

¶. 13. The members of the legislature shall receive for their services a sum not exceeding four dollars per day, from the commencement of the session; but such pay shall not exceed in the aggregate four hundred dollars for per diem allowance, except in proceedings for impeachment. When convened in extra session by the governor they shall receive four dollars per day. They shall receive the sum of one dollar for every ten miles they shall travel in going to and returning from the state capitol, on the most usual route.

The president of the senate and speaker of the house of representatives shall, in virtue of their offices, receive an additional compensation equal to one-third of their per diem allowance respectively.

Persons Ineligible as Members of the Legislature.

¶. 14. No person liable for public monies unaccounted for shall be eligible to a seat in either house of the legislature, or to any office of profit or trust until he shall have accounted for and paid over all sums for which he may have been liable.

Crime a Disqualification.

¶. 15. No person shall be eligible to any office of profit or trust, nor shall be permitted to exercise the right of suffrage within this state, who shall have been convicted of bribery, perjury, or other infamous crime.

Impeachment.

¶ 16. The House of Representatives shall have the sole power of impeachment, but a majority of all members elected must concur therein.

All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence. When the Governor of the State is tried the Chief Justice shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected, but judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, profit or trust under this state; but the impeached shall nevertheless be liable to indictment and punishment according to law. No officer shall exercise his office after he shall have been impeached, until he shall have been acquitted.

¶. 17. The Governor, Secretary of State, Auditor, Treasurer, Judges of the Supreme and Districts Courts, and all other elective State officers, shall be liable to impeachment for any misdemeanor in office.

Oath of Office.

¶. 18. Members of the Legislature, and all other officers elective and Judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

> "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Nebraska, and that I will faithfully discharge the duties of the office of ———with fidelity, and acording to the best of my ability."

Bills for Governor and Objections.

¶ 19. Every bill which shall have passed both houses shall be presented to the Governor. If he approves he shall sign it, but if he shall not approve he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be reconsidered, and if approved by two-thirds of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the Journals of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the Legislature, by their adjournment, prevented its return, in which case it shall be a law unless sent back within three days after their next meeting.

¶ 20. Every order, resolution or vote to which the concurrence of both houses may be necessary (except on a question of adjournment) shall be presented to the Governor, and before it shall take effect be approved by him, or, being disapproved shall be re-passed by two-thirds of both houses, according to the rules of limitations prescribed in case of a bill.

¶ 21. Any bill may originate in either house of the Legislature, except bills appropriating money, which shall originate only in the House of Representatives, and all bills passed by one house may be amended by the other.

Salt Lands Vested Forever in The State.

¶ 22. The Legislature shall never sell or dispose of the saline lands belonging to this State, but may authorize the purchase of contiguous lands thereto by authority of law, as may be necessary for the convenience and interest of the State.

Quorum for Each House.

¶ 23. A majority of each house shall constitute a quorum to do business, (except in cases of impeachment.) Each house shall determine the rules of its own proceedings, and be the judges of the elections, returns and qualifications of its own members and shall choose its own officers.

Senate and House May Expel.

¶ 24. Each house may determine the rules of its procedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free State.

Journal and Manner of Voting.

¶ 25. Each house shall keep a journal of its proceedings, and publish them, (except such parts as may require secrecy) and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered upon the journal. All votes in either house shall be "viva voce."

The doors of each house, and Committees of the whole, shall be open, unless when the business shall be such as ought to be kept secret. Neither house shall, without the consent of the other, adjourn for more than three days.

Freedom of Debate.

¶ 26. For any speech or debate in either house of the Legislature the members shall not be questioned in any other place.

¶ 27. The Legislature shall provide by law that all stationery required for the use of the State, and all printing authorized and required by them, to be done for their use or for the State, shall be let by contract to the lowest bidder; but the Legislature may establish a maximum price.

No member of the Legislature or other State officer shall be interested, either directly or indirectly, in any such contract.

¶ 28. The mode of organizing the house of Representatives at the commencement of each regular session, shall be prescribed by law.

¶ 29. Each bill and concurrent resolution, shall be read at large on three different days in each house, and the bill, and all amendments thereto, shall be printed before the vote is taken on the final passage.

The presiding officer of each house, shall sign in the presence of the house over which he presides, while the same is in session, and capable of transacting business, all bills and concurrent resolutions passed by the Legislature.

Indebtedness due The State.

¶. 30. The Legislature shall have no power to release or relinquish in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any municipal corporation therein.

¶ 31. Any person holding office under or by virtue of the laws of this State, who, except in payment of his salary, fees or perquisites, receives, or consents to receive, directly or indirectly, anything whatever of value, or of personal advantage, or the promise thereof, for performing or omitting to perform, any official act or, with the express or implied understanding that his official action or inaction is to be in some manner or degree influenced thereby, shall be deemed guilty of a felony, and on conviction shall be punished as the Legislature may provide.

¶32. Any person or persons offering a bribe, if the same shall be accepted, shall not be liable to civil or criminal prosecution therefor.

But any person who offers or promises such bribe, if the same shall be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony, and on conviction shall be punished as provided by this article.

¶ 33. Any person charged with receiving a bribe, or with offering or promising a bribe that is rejected, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Privileges of Senators and Members.

¶34. Members of the Legislature shall in all cases except treason, felony or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement, and after the termination of each session.

Divorce.

¶ 35. The Legislature shall not have power to enact laws annulling the contract of marriage in any case where by law the courts of the State are or hereafter may be empowered to decree a divorce.

Vacancies.

¶ 36. When vacancies occur in either house the president of the Senate or speaker of the House in which the vacancy may occur, shall issue writs of election to fill such vacancies.

¶ 37. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments, as in other bills. No money shall be drawn from the Treasury but in consequence of appropriations made by law.

Vice and Immorality.

¶ 38. The Legislature shall provide by law for the suppression of vice and immorality in this State, and shall never authorize any games of chance, lottery or gift enterprise, under any pretense or for any purpose whatever.

Public Money and Appropriations.

¶ 39. The Legislature shall make no appropriations of money out of the treasury in any private law. Bills making appropriations for the pay of members and officers of the Legislature, and for the salaries of the officers of the government, shall contain no provision on any other subject. The salary of any officer shall not be increased for any term for which he may have been appointed or elected.

¶ 40. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the Auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or seperate resolution. The Auditor shall, within 60 days after the adjournment of each session of the Legislature prepare and publish a full statement of all money expended at such session specifying the amount of each item, and to whom and for what paid.

¶ 41. Each Legislature shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general and special, requiring money to be paid out of the State Treasury from the funds belonging to the State shall end with such fiscal quarter; PROVIDED, that the State may meet casual deficits or failures in revenues, contract debts never to exceed in the aggregate $250,000; and monies thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt except for the purpose of repelling invasion, suppressing insurrection or defending the State in war, (for payment of which the faith of the State shall be pledged) shall be contracted unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the Legislature at such election. The Legislature shall provide for the publication of said law for three months at least, before the vote of the people shall be taken upon the same; and provision shall be made at the time for the payment of the interest annually as it shall accrue, by tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt is paid. And provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

¶ 42. The Legislature shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim or part thereof, hereafter created against the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void. PROVIDED, the Legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

¶ 43. The State shall never pay, assume or become responsible for the debts or liabilities of or in any manner give, loan or extend its credit to or in aid of any public or other corporation, association or individual.

Miscellaneous.

¶ 44. The Legislature shall provide by law that the fuel, stationery and printing paper furnished for the use of the State, the copying, printing binding and distributing the laws and journals, and all other printing ordered by the Legislature, shall be let by contract to the lowest bidder; but the Legislature shall fix a maximum price; and no member thereof, or other officer of the State, shall be interested, directly or indirectly, in such contract. But all such contracts shall be subject to the approval of the Governor, and if he disapproves of the same there shall be a re-letting of the contract in such manner as shall be prescribed by law.

¶ 45. The State of Nebraska shall never be made defendant in any court of law or equity.

¶ 46. No law shall be passed which shall operate to extend the term of any public officer after his election or appointment.

¶ 47. It shall be the duty of the Legislature to pass such laws as may be necessary for the protection of operative miners, by providing for ventilation when the same may be required, and the construction of the escapement shafts, or such other appliances as may secure safety in all coal mines, and to provide for the enforcement of said laws by such penalties and punishments as may be deemed proper.

¶ 48. The Legislature shall provide for establishing and opening roads and cartways connected with a public road for private and public use.

¶ 49. The Legislature may pass laws permitting the owners or occupants of lands to construct drains and ditches for agricultural and sanitary purposes across the lands of others.

¶ 50. The Legislature shall pass liberal homestead and pre-emption laws.

Mr. MYERS. I move that 200 copies be printed.

Motion agreed to.

Communications.

The PRESIDENT. Gentlemen, I have a communication from the Auditor, which the clerk will read, if there is no objection.

The Secretary read the communication as follows.

Auditor's Office, Lincoln, Nebraska, June 26, 1871.

Hon. S. A. STRICKLAND.
President Constitutional Convention:

Sir:—In reply to a resolution of your honorable body, dated June 24, 1871, requesting an explanation in general terms of the amount of annual expenses on the General Fund.

I have the honor to submit the following as shown by the appropriation bills passed at the eighth session of the Legislature, and the expenditures authorized by statute:

APPROPRIATIONS.

Deaf and Dumb (erection of buildings)	$15,000.00
Normal School (erection of buildings)	27,758.50
Insane Asylum (outstanding indebtedness)	19,317.97
Insane Asylum (expenses of 1871)	34,800.00
Building Powder Magazine	231.46
Immigration expenses	15,000.00
Legislative expenses	16,000.00
Impeachment trials	10,000.00
Constitutional Convention expenses	15,000.00
For the payment of persons	34,895.51
Improvement of Library (Law Division)	1,000.00
Publication of Laws of 1870	50.00
Copying Laws	249.80
Relief of Geo. W. Whitehead	1,200.00
Relief of John M. McDonald	200.00
Current expenses of 1871	65,178.87
Total	$255,882.11

EXPENSES AUTHORIZED BY STATUTE.

Wolf and Wild Cat Bounties	$1,500.00
Gopher	1,000.00
Fugitives from Justice	1,000.00
Insane expenses (fees)	8,000.00
State Convicts (fees)	2,000.00
Expenses Sale of School Lands	5,000.00
Revenue Expenses	7,500.00
Total	$26,000.00
Appropriations brought forward	255,882.11
Grand Total	$281,882.11

The grand total, although considerably larger than my estimate of two hundred thousand dollars ($200,000), as the annual expenses on this Fund, will, as several of the appropriations will not all be paid this year, about reach the average expenses that this fund pays annually.

Respectfully yours, etc.,

JOHN GILLESPIE,
State Auditor.

The PRESIDENT. Unless there is some objection, 200 copies will be ordered printed.

So ordered.

Mr. CURTIS. Mr. President, I have a resolution to offer.

The Secretary read the resolution as follows:

PREAMBLE.

Believing that the Christian religion is the foundation of our civil liberties, that its benign, equalizing and glorious principles have upheld and perpetuated our Republican institutions, and believing that a desecration of the Christian Sabbath by secular pursuits and amusements have a tendency to drag down and destroy the religious influences of the country and carry us back to the dark ages, therefore

RESOLVED: That it is the sense of this Convention that Statutory provisions to prevent the desecration of the Christian Sabbath are eminently right and proper in this and all other States of our union.

Mr. CASSELL. Mr. President, I move the adoption of the resolution.

Motion agreed to.

Mr. WILSON. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the privileges of the floor of this Convention be and the same are hereby extended to David Butler.

Mr. MYERS. Mr. President, I move the indefinite postponement of the consideration of the resolution.

The PRESIDENT. Gentlemen, the question is upon the indefinite postponement.

Mr. WILSON. Mr. President, I call for the ayes and nays.

Mr. PHILPOTT. I desire to have the resolution read again.

The Secretary read the resolution again.

The PRESIDENT, being requested to vote read from Cushing's Manual the rule and remarks governing the vote of the President.

The Secretary called the roll, with the following result; ayes—28 nays—15, as follows:

AYES—28

Abbott,
Ballard,
Boyd,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Ley,
Lyon,
McCann,
Manderson,
Moore,
Myers,
Neligh,
Newsom,
Price,
Robinson,
Shaff,
Speice,
Sprague,
Stevenson,
Thummel,
Thomas,
Woolworth,

NAYS—15

Campbell,
Cassell,
Curtis,
Kenaston,
Kilburn,
Kirkpatrick,
Parker,
Philpott,
Reynolds,
Scofield,
Stewart,
Towle,
Vifquain,
Weaver,
Wilson,

ABSENT OR NOT VOTING.

Grenell,
Lake,
Majors,
Mason,
Maxwell,
Parchen,
Price,
Reynolds,
Wakeley,

So the motion to indefinitely postpone prevailed.

Mr. GRIGGS. Mr. President, I have a resolution I wish to present, and I move you that it be referred to the Committee on Judiciary.

The Secretary read the resolution as follows:

WHEREAS: In answer to resolution of this Convention addressed to the Secretary of State requesting him to furnish the entire cost of the public printing of this state up to the present date (June 22nd 1871). He replies that "the entire disbursement for that purpose was $20,851.-00 and

WHEREAS: Such information does not contain the information sought by this Convention, therefore be it

RESOLVED: That the Secretary of State be requested to furnish the information sought by the original resolution.

Mr. Griggs' motion to refer to Committee on Judiciary was agreed to.

Mr. SPEICE. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That there should be a provision in the Constitution as follows; Any inhabitant of this State who shall hereafter be engaged in a duel, either as principal or second, or who shall send or accept a challenge, or knowingly be the bearer of a challenge to fight a duel, or shall aid or assist, or in any manner encourage duelling—any person so offending shall forever be disqualified as an elector, and from holding any office under the laws of this State and be punished in addition, in such manner as shall be provided by law.

Mr. SPEICE. Mr. President, I move the adoption of the resolution.

Mr. HASCALL. Mr. President, that is a proposition to be engrafted in our Constitution and our rules require it be referred to the proper Committee.

Mr. SPEICE. Mr. President, I move it be referred to the Committee on Miscellaneous Subjects.

Motion agreed to.

Mr. WOOLWORTH. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Committee on Electoral and Representative Reform be instructed to draft and report a scheme for introducing into the election of officers of the Executive Department the principle of minority representation.

Referred to the Committee on Electoral and Representative Reform.

Mr. WOOLWORTH. Mr. President, I offer another resolution.

The Secretary read the second resolution of Mr. Woolworth as follows:

RESOLVED: That the Committee on State Institutions and Public Buildings inquire into and report to this Convention upon the propriety of creating the Office of Superintendent of Public Buildings, who shall be a professional architect.

Referred to the Committee on State Institutions and Public Buildings.

Mr. WOOLWORTH. I offer another resolution, Mr. President.

The Secretary read the resolution as follows:

RESOLVED: That the Committee on Finance and Revenue be instructed to draft and report to this Convention a system of accounting in the Treasury, providing for a review by some officer of the action of the Auditor upon every claim made against the State before the issue of a warrant therefor.

Referred to the Committee on Revenue and Finance.

Mr. CAMPBELL. Mr. President, I wish to offer a resolution and move its adoption.

The resolution was read by the Secretary as follows:

RESOLVED. That a Committee of three be appointed to visit the Insane Asylum with instructions to report to this Convention to-morrow the condition of that institution.

Resolution adopted.

The PRESIDENT. Gentlemen, I appoint as that Committee, Mr. Campbell, Dr. Stewart, and Dr. Kenaston; three physicians.

Mr. TOWLE. Mr. President, I

offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That at the time of voting on the adoption of this Constitution, there shall be elected by the qualified voters of the State at large, three judges of the Supreme Court, at the said election each qualified voter may cast, upon a single ballot, three votes for one candidate, or he may distribute the same, or equal parts thereof among the candidates as he shall see fit; and the three candidates highest in votes shall be declared elected judges of the Supreme Court.

Mr. TOWLE. I move Mr. President the resolution be referred to the Committee on Judiciary.

Motion agreed to.

Mr. GRIGGS. Mr. President, I offer a resolution.

The Secretary read the resolution as follow:

RESOLVED: That the State be divided into three general divisions for the election of judges of the Supreme Court, to be denominated Southern, Central and Northern, and one of the judges of the said court shall be elected in each of said districts by the electors thereof at such time or times as shall be provided by this Constitution.

Mr. GRIGGS. I move the adoption of the resolution.

Motion agreed to.

Mr. STEVENSON. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the title, in fee simple, shall vest in any county where land is taken for public roads or highways, upon said counties in which such lands so taken are situated, paying, or tendering to the owner, or guardians of such lands the actual value thereof.

Mr. HASCALL. Mr. President, I move it be referred to the Miscellaneous Committee.

Mr. STEVENSON. The proper Committee, Mr. President to refer it to, would be the Committee on Roads. I think the gentleman is disposed to refer too many resolutions to the Miscellaneous Committee.

The PRESIDENT. The question will be upon the reference to the first named Committee.

Mr. HASCALL. Mr. President, I withdraw my motion.

The motion to refer to the Committee on Roads, was then agreed to.

The PRESIDENT. For the information of the members of the Convention. I will say that Mr. Mason, Chairman of the Committee on Bill of Rights, has handed in his report. It can be taken up, but I believe he is not here. Mr. Woolworth, Chairman of the Committee on Executive has also reported. That report can be taken up and made the order of the day for tomorrow, if it is desired.

Mr. McCANN. Mr. President, I will be glad if the report of the Executive Committee be taken up, since Mr. Mason is not here and Mr. Woolworth is.

Mr. ESTABROOK. Mr. President, before anything is done in Committee of the Whole, I hope the Bills will be brought in printed, in the usual form to be amended.

The PRESIDENT. The Clerk informs me that the Bills will be on the desks of the members tomorrow morning.

Mr. BALLARD. Mr. President, I move we adjourn until 10 o'clock tomorrow morning.

The motion was agreed to.

So the Convention (at three o'clock and fifteen minutes) adjourned.

TWELFTH DAY.

Tuesday, June 27, 1871.

The Convention met at 10 o'clock A. M., and was called to order by the President.

Prayer.

Prayer was offered by the Chaplain to the Convention as follows:

Almighty and most merciful God, be thou pleased, we pray, thee, to accept our thanks for thy great love. May we never forget how much we are indebted unto Thee for the peace of our land and may it please Thee, that we may have above us the protection of our flag and the laws, and may our actions have ever in view the protection of all the people. Amen.

Reading of the Journal.

The Journal of the last day's proceedings was read and approved.

Reports of Standing Committees.

When the Committee on Rights of Suffrage was called, the Chairman, Mr. MAXWELL, said: Mr. President, the Committee on Rights of Suffrage made a report on Saturday morning and it was ordered printed, but I understand it has been lost or mislaid.

The Secretary stated, that the original report had been placed into the hands of the Secretary of State for printing and he was informed that it had been lost, but that he had seen a copy of the report printed in the "Daily State Journal" this morning.

Mr. MAXWELL. Mr. President, I will state that Mr. Gere applied to me for a copy on Saturday morning. He has published it, I think essentially as made by the Committee.

The PRESIDENT. It would be well for the Chairman of the Committee to wait on the Secretary of State and find out about it.

Mr. CAMPBELL. Mr. President, the Select Committee appointed yesterday to examine the Insane Asylum wish to present their report.

The Secretary read the report as follows:

Mr. President, your Committee which was appointed to visit the Insane Asylum, and to report the condition of said institution to this Convention, would beg leave to report.

The building is a low, two-story frame building, sixty feet long by eighteen wide, with a shed room attached of the same length.

In this building are packed forty-four persons. The male patients, some twenty-five in number, are all in the other room, some of them very desperate characters.

The females are in the upper story of the main building, in little rooms of eight feet square, without ventilation. Your Committee are of the opinion that if those unfortunate creatures remain where they are through the summer they will be all sick before the expiration of the year—in fact some are now sick.

Your Committee are also of opinion that it would be better to turn them out than to keep them confined where they can neither have exercise, air, nor medical attention.

Your Committee would recommend the following resolution:

RESOLVED: That the superintendent of the Insane Asylum be and is hereby requested to procure a more suitable building for the comfort of the insane.

The resolution was agreed to.

Presentation of Resolutions.

Mr. LEY. I have a resolution.

Resolution read by the Secretary as follows:

RESOLVED: That the President and the Superintendent of the State Board of Emigration be and they are hereby requested to furnish the Convention with a full, complete, account an itemized statement of the expenditures of said Board, and for what, and when, each item of expense was incurred. How much has been paid or allowed to each member of said Board. How much has been paid for printing and to whom; was there any advertisement for the necessary printing, and invitation for bids to do said printing, and was the same given to the lowest bidder. How many are now in the employ of said Board of Emigration and what are their names, age, nativity, and former occupation, the names, ages and occupation of all agents and employees of said Board and how much has been paid each, and in brief the summary of all the acts of said Board.

Mr. LEY. I move the adoption of the resolution.

The motion was agreed to.

Mr. McCANN. Mr. President, I have a resolution.

The Secretary read the resolution as follows:

RESOLVED: That so much of the communication of the Auditor of State under date of the 26th June, 1871, as is comprised in the two items, "Payment of persons $34,-898.50" and "Current expenses of 1871 $65,178.87", be respectfully returned to the Auditor requesting the items both as to persons to whom paid, for what services and what expenses.

Mr. McCANN. Mr. President, I move the resolution be adopted.

The motion was agreed to.

Mr. HASCALL. Mr. President, I have a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Secretary be and he is hereby directed to retain in his possession the original of the reports of Standing Committees of this body and to furnish copies of the said reports for the public printer.

Mr. HASCALL. I move the adoption of the resolution and will say why I desire that it should be done. I find that from remarks dropped here that our Secretary has suffered an original report of a Standing Committee to go from this body, which has gone to a printing office not doing public printing and has been lost. It is very improper that any document belonging to this body should go from it. If there is any printing to be done the Secretary should furnish a copy. If the Secretary has not time to make a copy we must employ help to do this.

Mr. STEWART. I have no objection to the adoption of the resolution. I understand the report did not go into the hands of any office not doing public printing. I do not wish any reflections be cast on parties unjustly. I wish this responsibility to rest on the parties who are responsible.

The PRESIDENT. I understood the gentleman from Cass to say this morning that he gave a copy himself to the newspaper that published it.

Mr. MAXWELL. I will say that I furnished the copy to Mr. Gere; I have read it and see it is the verbatim report.

Mr. HASCALL. I was laboring under a misapprehension as to how the copy was obtained. I understood that the copy was obtained by the printer setting the type from the original. It is proper that the original should be retained here. Without wishing to censure any one for this transaction I would like this resolution to pass. Whatever printing is done by the public printer the work should be done from copy.

Mr. MAXWELL. My observation has been that where a paper is ordered printed, the bill itself goes to the printer. There has been no order made in this body to keep the resolution here. The proper way is to keep the original and send the copy, but it cannot always be done. The report has simply been misplaced, and I presume will be replaced.

The PRESIDENT. It would take but a moment to find out what the Secretary of State did with it, the Secretary informs me he passed it there. I will take the liberty to ask the Chairman of the Committee on Suffrage to wait upon the Secretary of State and see what was done with it.

Mr. ESTABROOK. What Secretary, may I inquire, is referred to in the resolution.

Mr. HASCALL. I will say, when we speak of the Secretary, we mean our Secretary, when we mean the Secretary of State we say so.

Mr. ESTABROOK. Do I understand it has gone to the Secretary of State officially?

The PRESIDENT. Yes, sir.

Mr. ESTABROOK. How came it into the hands of the Secretary of State?

The PRESIDENT. For the purpose of having it printed.

Mr. HASCALL. This resolution is to require our Secretary to return the original and furnish a copy for printing, that will obviate the necessity of the original going to the Secretary of State.

Mr. ESTABROOK. I think we will find now if we have saved a little time by refusing to employ the necessary clerical force and remind the gentleman that we may be losing a little at the bung hole.

Mr. TOWLE. Mr. President, I move that the further consideration of this subject be indefinitely postponed.

Mr. HASCALL. If the gentleman will permit I would like to withdraw the resolution.

Leave granted NEM. CON.

Mr. SCOFIELD. Mr. President, I have a resolution I would like to submit.

The Secretary read the resolution, as follows:

RESOLVED, That the Penitentiary Inspectors be requested to furnish to this Convention a full and complete statement of the amount of money received by them as such Inspectors and from what sources the amount of money expended by them as such Inspectors in the construction of the State Penitentiary; the quantity of public lands sold by them, with a description of the same, and the price paid per acre for which it was sold; the number of persons which are now or have been employed by them, exclusive of the laborers upon the penitentiary building, and the salaries paid such persons for their services; the number of officers connected with the penitentiary, and their salaries; and also a statement of the cost of the care and custody of the State prisoners since they have been under the charge and control of said Inspectors, and the number of prisoners now confined in the penitentiary.

Mr. SCOFIELD. I move the adoption of the resolution.

Motion agreed to.

Mr. ROBINSON. Mr. President, I have a resolution to offer.

The Secretary read the resolution, as follows:

RESOLVED: That the principle of minority representation is eminently just and right and ought to be adopted in all our elections, where practicable to be carried out.

Mr. ROBINSON. Mr. President, I move the adoption of the resolution.

Mr. MAXWELL. Mr. President, I do not know that I am in favor of the adoption of minority representation, as a principle. This is a matter which seems to me to forestall the action of the Convention. As a proposition that we are in favor of this to apply in all departments is a broad proposition, and rather premature to attempt to bind this Convention until we fully discuss this question in all its bearings. If it is thought best to adopt this, as a proposition, then I am in favor of it. But to adopt it without discussion is premature. After we have examined this question it may be we shall not think so much of it as we do now. What is minority representation? We speak of it and we fully understand exactly the term. The people are supposed to be represented by a party who is elected as their officer. It is the people who speak. It is true a majority of the votes elect, but they are still elected as a voice of the people. It is proposed to give those who are in the minority a voice also, and I hope this resolution will not be adopted until we hear the articles proposed to be introduced as a part of the Constitution.

Mr. GRIGGS. Mr. President, I move you that this resolution be indefinitely postponed.

Mr. ESTABROOK. Mr. President. It seems to me that this comes within the rule that requires those matters that are to be incorporated in the articles, to be referred without argument. I move that it be referred to the Committee on Electoral and Representative Reform, without debate.

Mr. GRAY. Mr. President, I think a motion to indefinitely postpone takes precedence.

Mr. ESTABROOK. I don't think it does any such thing. It can only be suspended by a vote of two-thirds of the body.

Mr. STEWART. Mr. President, Is this a proposition to amend the Constitution? I did not so understand it.

Mr. MYERS. I will ask the gentleman who made the motion to indefinitely postpone to withdraw it and substitute that it lay on the table.

Mr. GRIGGS. I accept the amendment.

The PRESIDENT. I will read the rule, No. 36.

"All propositions presented to the Convention relating to the provisions or frame of the Constitution, shall in the first instance be referred to an appropriate standing committee, without debate, except as to the committee to which the reference shall be made."

The motion to commit is in order, unless the Convention suspend the rule by a two-thirds vote.

Mr. ROBINSON. Mr. President, I am of the opinion that this is not a proposition to amend the Constitution in any way. I intended to introduce the resolution for another purpose. I do not intend that this shall forestall action. This is where this thing ought to be introduced. We are the judges as to whether it is practicable. I insist on the motion to adopt, if there is no other.

Mr. WOOLWORTH. Mr. President, I hope this resolution will go to the Committee on Electoral and Representative Reform. Whether we be compelled to send it there by the rules or not. It seems to me as if the rule ought to be considered. The object is, evidently to get a matured opinion from the Committee upon the subject referred to them, so that with such a matured opinion the members of this body may be informed upon the subject. Hence it may act with wisdom and with consideration. Now here is a general principle enunciated: it is enunciated here in very broad terms. As a friend of minority representation myself, I am not altogether certain that I shall vote for this resolution, if pressed to do so at this time. As the gentleman from Cass (Mr. Maxwell) suggested, it is a matter that needs to be looked at in every aspect. And when it is sought to apply it universally to every department of the government, and to the fullest extent, it may be a step quite too long for even me to take; although I say now, with the principle I am content, and for the principle, if it shall seem to me eminently necessary, I shall contend. Now, I hope this resolution will take the ordinary course and go to the Committee which has the matter generally in charge to be considered by that Committee maturely in all its aspects, so that it may give us its deliberate opinion; inform us not only upon the subject of minority representation, as it shall be applied to one, but to every department of the body, and then we may act not hastily, as is proposed, I am afraid now. Not hastily but after matured reflection and consideration. Now, I think the rule, in the spirit of it, if not with the letter, requires that the matter shall take that course, and that it be sent to the Committee. Now, suppose this be a mere general proposition, some general subject with reference to civil polity why, it is not a proper subject for us to waste our time and breath upon. We are here for a certain specific duty, and that is to propose to the people of this State a Constitution complete in all its parts or amendments to the present Constitution, whichever they please; and not to discuss general propositions of civil polity. This is therefore, if it has any business before us at all, a proposition relating to the framing of the Constitution; it is a general proposition, but nevertheless it is a proposition relating to the frame of the Constitution; and therefore it ought to take precedence.

Mr. ROBINSON. If the Chair is in any doubt, I withdraw my motion to adopt.

The PRESIDENT. Gentlemen; the question is this—I shall not treat this as a proposition to amend the Constitution, but in the sense it is understood by the gentleman from Lancaster himself. A motion is made to lay upon the table, one to postpone indefinitely, and another to commit.

Mr. ESTABROOK. In our ordinary elections this principle—

Mr. MYERS. The gentleman is out of order.

The PRESIDENT. The question is upon the motion to lay upon the table.

Mr. ROBINSON. Mr. President, I call for the "ayes" and "nays."

Mr. HASCALL. Mr. President, If the Secretary will be kind enough to read the resolution again.

The resolution is again read by the Secretary.

The PRESIDENT. Gentlemen; the question is upon the motion to lay upon the table. As many as are in favor of laying the resolution upon the table, will as their names are called, answer "aye," those of a contrary opinion will answer "no".

The Secretary proceeded to call the roll.

The result was then announced—yeas 22, nays 23—as follows:

YEAS—

Abbott,
Ballard,
Cassell,
Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Griggs;
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Maxwell,
Myers,
Neligh,
Parker,
Price,
Reynolds,
Sprague,
Weaver,
Wilson,

NAYS—

Boyd,
Campbell,
Curtis,
Estabrook,
Hascall,
McCann,
Manderson,
Moore,
Newsom,
Robinson,
Scofield,
Shaff,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Towle,
Vifquain,
Wakeley,
Woolworth,
Mr. President,

ABSENT OR NOT VOTING.

Grenell,
Lake,
Majors,
Mason,
Parchen,
Philpott,
Tisdel—7.

So the motion was not agreed to.

The PRESIDENT. Gentlemen; the question is now upon the commitment of the resolution.

The motion to commit was agreed to.

Mr. HASCALL. Mr. President, I offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Auditor be and he is hereby requested to furnish to this Convention a full and detailed statement of all expenditures made on account of the Insane of the State, prior to this date, except for the erection of the building for the insane totally destroyed by fire; giving the date of each expenditure, and for what expended.

Mr. MYERS. Mr. President, I move the adoption of the resolution.

Mr. ROBINSON. I call for the reading of it again, Mr. President.

The resolution is again read by the Secretary.

The motion to adopt is agreed to.

Mr. GRIGGS. Mr. President, will you, out of the usual order, accept the report of the Committee on

Township and Precinct Organizations?

Leave being granted the Committee reported out of the regular order of business.

The Secretary read the report as follows:

Mr. PRESIDENT—Your Committee on "Township and Precinct Organization," beg leave to report the following sections to be incorporated in the Constitution, all of which is respectfully submitted.

N. K. GRIGGS,
Chairman.

Sec.——The Legislature at its next general session shall provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county voting at any general election, shall so determine; and whenever any county shall adopt township organization, so much of this Constitution as provides for the management of the fiscal concerns of said county by the Board of County Commissioners, may be dispensed with, and the affairs of said county may be transacted in such a manner as the Legislature may provide; and in any county that shall adopt township organization, the question of continuing the same may be submitted to a vote of the electors of such county at a general election in a manner that shall hereafter be provided by the Legislature, and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county, and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in said county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the State.

Sec. ——There shall be elected in each of the counties in this State, three officers, who shall be styled "The Board of County Commissioners," whose term of office shall be three years, and who shall hold sessions for the transaction of county business as shall be provided by law, PROVIDED, That the County Commissioners now elect in the several counties of the State shall hold their office for the term for which were elected.

Mr. GRAY. Mr. President, I move that the report be received, and that the sections be read the first and second time, and referred to the Committee of the Whole, in pursuance of rule 50. I have no desire to hurry this matter over without consideration that is all I desire to state with reference to it. If there is no serious objections to any of these sections, I am willing to take any other course to get the matter before the Convention.

Mr. MYERS. I hope, Mr. President, the gentleman will waive his motion until the proposition is printed; that has been the course pursued heretofore. If the gentleman will wait until the proposition is printed and before the Convention, the sections can then be discussed.

Mr. GRAY. My idea in sending it to the Committee of the Whole before it is printed, is this: There is another Committee on Counties and I have thought it very probable that Committee will report something as to county organizations, and I desire their report to be considered in connection with this report, before the Committee of the Whole.

Mr. HASCALL. I am unwilling to consider any proposition in Committee of the Whole, unless it is printed and put upon our desks. This is an important matter, too important a matter to pick up and hurry through. I will make an amendment so that instead of reading the second time and referring to the Committee of the Whole, that 100 copies of the report be printed for the use of this Convention.

Mr. GRAY. I accept the amendment.

The PRESIDENT. Gentlemen; the question is upon the motion to print 100 copies. The motion will be considered adopted unless some gentleman objects.

The motion was agreed to NEM. CON.

Mr. LEY. Mr. President, I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Superintendent of the Insane Asylum be, and he is hereby requested, to communicate to the Convention, the number of insane persons now in the Asylum, their names, ages, and cause and character of their insanity, from what county such insane persons come; whether there are any idiots now confined in said institution, and if so, the name and age of such and from what county they come. What written or printed instructions, if any, are established for the observance of those in charge of the institution. What has been the expense of said institution since January, 1871 up to the present time. or so far as the same can be ascertained, with an itemized statement for what such expenses was incurred. How much has been paid to assistants and attendants, and what length of time each served; and how much each has been paid. How much has been paid for fuel and when and how and to whom paid; and in brief, a full, true and accurately itemized account of each, and every item of expense since the present Superintendent took charge of said institution.

Mr. LEY. Mr. President, I move its adoption.

Mr. SPRAGUE. Mr. President, I would like to ask the gentleman what is the object of the resolution. It seems to me that we are going far beyond our power in these inquiries, and I think it is unnecessary to occupy the time of the Convention with such resolutions.

The PRESIDENT. The question is on the adoption of the resolution.

The motion to adopt was agreed to.

Mr. WOOLWORTH. Mr. President, I would like to enquire what progress has been made in printing the report of the Executive Committee in bill form.

The PRESIDENT. The Secretary informs me that it is printed and was to be here this morning.

Mr. WOOLWORTH. If it is in order, Mr. President, I would move that the report be made the special order in the Committee of the Whole this afternoon at 2 o'clock.

Mr. MYERS. Mr. President, I would offer as an amendment, that all of the reports that have been made from Standing Committees to the Convention, be made the special order for this afternoon and that they be taken up in their order.

Mr. WOOLWORTH. Mr. President, I hope the amendment will not prevail. If it should, the first subject will be the report of the Committee on Bill of Rights. The Chairman of that Committee Judge Mason, is not here; he has been detained away by sickness in his family, and I am not in favor of considering it in his absence.

Mr. ESTABROOK. Mr. President, I am unwilling to make this a special order until I know that it is printed. I think we may obtain the object of this motion by simply adjourning until 2 o'clock.

The PRESIDENT. I have just sent a page to ascertain if this report is printed.

Mr. WOOLWORTH. Mr. President, I will withdraw my motion until we hear whether the report is printed.

Mr. HASCALL. Mr. President. I move that we do now adjourn until 2 o'clock this afternoon.

The motion to adjourn was agreed to. So the Convention, (at eleven o'clock and ten minutes), adjourned.

AFTERNOON SESSION.

The Convention met at 2 o'clock p. m. and was called to order by the President.

The Secretary called the roll.

Mr. ROBINSON. Mr. President, I would enquire what order of business we are under.

The PRESIDENT. None at all.

Mr. ROBINSON. I ask permission to introduce a resolution, and move its reference to the Judiciary Committee.

The Secretary read the resolution as follows:

RESOLVED: The Supreme Court in addition to its ordinary powers and jurisdiction shall be a court of Claims, and shall have exclusive Jurisdiction to try and determine all claims against the State in such cases as the Legislature shall by law authorize to be brought before it. Its powers, the effect of its decrees, the execution and its mode of procedure shall be as defined and prescribed by law.

The motion was agreed to.

Mr. MYERS. Mr. President, I move that the Convention now resolve itself into Committee of the Whole and that the Article on Executive be referred to that Committee for its consideration.

The motion was agreed to.

The PRESIDENT. Will the gentleman from Douglas (Mr. Myers) take the Chair.

At 2 o'clock and ten minutes the Convention went into Committee of the Whole, Mr. Myers in the Chair.

The CHAIRMAN. Gentlemen of the Committee, the Committee have referred to them the Article relative to the Executive, what order shall the Committee make on the Article. The Secretary will read the bill as referred to this Committee.

Mr. HASCALL. As we all have a printed copy of the bill and it will take considerable time to read it through, I hope it will be taken up by sections if there is no objection.

Mr. MANDERSON. I move that the Secretary read from the original manuscript that it may be compared with the printed one.

The CHAIRMAN. I cannot entertain that motion.

Mr. MANDERSON. There has been no revision of it.

The CHAIRMAN. The Secretary will read the bill.

Mr. WOOLWORTH. I suppose he will read from the original.

The CHAIRMAN. The Secretary always reads from the printed bill.

Mr. ESTABROOK. Do I understand that a bill is always read from the printed copy.

The CHAIRMAN. Yes, sir.

Mr. WOOLWORTH. Supposing the printer has made a mistake.

The CHAIRMAN. It is the duty of the Committee to correct it.

Mr. ESTABROOK. I read—

The CHAIRMAN. The gentleman will please take his seat.

Mr. ESTABROOK. I rise to second the motion of my colleague, that the clerk read the original bill.

The CHAIRMAN. I declare it out of order, the Secretary will read the printed copy.

Mr. ESTABROOK. I appeal from the decision of the chair.

The CHAIRMAN. There can be no appeal in Committee of the Whole the Secretary will read the bill.

Mr. LAKE. Mr. Chairman, the Secretary is not reading correctly, it is the report of the Executive Committee by Mr. Woolworth, Chairman.

Mr. ESTABROOK. I rise to a point of order, we are in Committee of the Whole on the Executive Committee bill.

The CHAIRMAN. That is not a point of order, what was referred to this Committee was the bill on the Executive, the Secretary will read the Bill and no other.

Mr. STRICKLAND. Mr. Chairman, there is a mistake in the original Bill, it was headed Judicial, the last is Executive.

Mr. WOOLWORTH. I think it should read the Committee on Executive.

The CHAIRMAN. The chair will state what is before this Committee. This Committee has referred to it by the Convention, the bill only and no report of any Committee is before it. The Secretary will please to read the first Article headed Executive Department, and omit all reports.

The Secretary read the bill as follows:

ARTICLE.

EXECUTIVE DEPARTMENT.

¶ 1. Officers of the Department.
¶ 2. Of the State Treasurer.
¶ 3. Time of electing State Officers.
¶ 4. Returns—Tie—Contested Election.
¶ 5. Eligibility for Office.
¶ 6. Governor—Power and Duty.
¶ 7. His Message and Statement.
¶ 8. Convening the General Assembly.
¶ 9. Proroguing the General Assembly.
¶ 10. Nominations by the Governor.
¶ 11. Vacancies may be Filled.
¶ 12. Removals by the Governor.
¶ 13. Reprieves—Commutations—Pardons.
14. Governor as Commander-in-Chief.
¶ 15. Impeachment for Misdemeanor.
¶ 16. Veto of the Governor.
¶ 17. Lieutenant Governor as Governor.
¶ 18. As President of the Senate.
¶ 19. Vacancy in Governor's Office.
¶ 20. Vacancy in other State Offices.
¶ 21. Reports of State Officers.
¶ 22. Great seal of State.
¶ 23. Fees and Salaries.
¶ 24. Definition of "Office."
¶ 25. Oath of Civil Officers.
¶ 26. Bonds.

EXECUTIVE DEPARTMENT.

¶ 1. The executive department shall consist of a governor, lieutenand governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, and attorney general, who shall each hold his office for the term of two years from the first day of January next after his election „ and until his successor is elected and qualified; but when that day shall fall on Sunday the term of office shall commence on the following day. They shall, except the lieutenant governor,reside at the seat of government during their term of office, and keep the public records, books and papers there, and shall perform such duties as may be prescribed by law.

¶ 2. The treasurer shall be ineligible for office for two years next after the end of the term for which he was elected.

The CHAIRMAN. Gentlemen of the Convention, this Article having been read through the Secretary will read the first section.

Mr. CAMPBELL. Mr. Chairman, Is this an Article which it is proposed to put into the Constitution at the present time.

The CHAIRMAN. This is the Article on "Executive", which was referred to the Committee of the Whole by the Convention.

Mr. HASCALL. I would say to the gentleman that if we adopt it and ratify what the Convention have done, of course it goes into the Constitution.

Mr. CAMPBELL. It says on the sixth page of the "Rules of the Convention," in paragraph No.50—"Every Article which it is proposed shall form part of the Constitution, shall be read the first and second times, and be referred to the Committee of the Whole; and after it shall have been considered in Committee of the Whole and after the amendments reported by the Committee of the Whole, shall have been acted on, it shall be open to amendment in the Convention." That we have not done.

Mr. HASCALL. I will say Mr. Chairman, the matter has been referred to the Committee of the Whole and we are now in session. There was no objection to going in Committee of the Whole without reading twice before the Convention.

Mr. STRICKLAND. Mr. Chairman. I would say I think this is all in regular order for the reason stated by the gentleman from Douglas (Mr. Hascall.)

The CHAIRMAN. This Committee is here by order of the Convention. The Committee cannot amend any of the rules of the Convention.

Mr. ESTABROOK. Mr. Chairman, as this is the first time we have gone into Committee of the Whole, we are a little green, perhaps it will be well to inquire into the matter. We are in Committee of the Whole, of course, but if there is no business which can come before us legitimately, we had better go out of Committee of the Whole.

The CHAIRMAN. I will remind the gentleman that while in Committee of the Whole, we cannot discuss the rules of the Convention. There is only one remedy, which is, for the Committee to rise and report progress, and ask leave to sit again.

Mr. ESTABROOK. I find no fault with the rules of the Convention. I only deny that this Committee has anything before it, as the Article which is under consideration, has not been read twice as the rules prescribe.

Mr. LAKE. I would like to know how the gentleman knows it has not been read twice.

Mr. ESTABROOK. It has never

been read but once before the Convention.

Mr. McCANN. I move this Committee do now rise and report progress and ask leave to sit again.

The CHAIRMAN. Gentlemen, the question is upon the motion that the Committee rise, report progress and ask leave to sit again.

Mr. STRICKLAND. Mr. Chairman it loks like this is a "double chassing" back and forth to no purpose. We do not always stick to the rules while in Convention. Gentlemen get up in this body, and ask leave of absence for instance, which is granted by the President. This may not be in order, but is done because no one objects. The Convention has gone into Committee of the Whole unanimously. Now I hope we will not go into this child's play—excuse me Mr. McCann—of "rising and reporting progress." It seems to me it is very foolish. It is only going through a motion—something as we do sometimes in the military, "one time and two motions." Suppose, for example we rise and report progress and then the bill is read, what then? It can be read fifty times before it is passed upon, but there is no advantage in this. The rule in Legislative bodies provides that bills shall be read a second and third time, but it is well known that it is the custom to suspend the rules and read the bill the second and third time by its title.

Mr. LAKE. It seems to me, Mr. Chairman, that the course being taken here in this Committee, makes the Committee more important than the Convention. Now the Convention, while in session, have directed this Committee to proceed to consider this matter, and we have no right, Mr. Chairman, to say that the Convention has not done what it ought to do. We have nothing to do with the rules whatever. What real difference does it make, whether the bill has been read once, or twice, or three times, cannot we consider the matter, as it is, just as well as though it had been read the second and third times. We have nothing to do with the rules of this Convention while in Committee of the Whole. I am opposed to rising at this time and reporting progress, when it is well known that we have made no progress. I trust we will go on and occupy a reasonable portion of the afternoon in considering this matter.

The CHAIRMAN. The Chair has given its opinion that this Article is properly before this Committee, and has not entertained any other idea, but it is bound to entertain the motions made by members of this Committee.

Mr. KIRKPATRICK. If this bill is not in order to come before the Committee of the Whole, I don't see how the gentleman can move to rise and report progress when there is nothing before it to consider.

Mr. ESTABROOK. Mr. Chairman, We have to look sir, at its present status, now when we rise, we report something back to the house. We have a bill here which has never been read so much as once under the rules, by the President of this body. It has never gone through the routine, and I deny that we can consider this until it has had its regular readings. Can you take up any bill you may see fit to bring before this Committee, when it has never been read. Now it is said to be silly to go back. I ask if we are not acting silly now? What will be the record which the reporters are making of our debate on this subject? Now there are substantial reasons why this Article shall be read, as the rule provides. I have had no opportunity of knowing what is in this bill. We do not know what its merits are, we do not know how to suggest amendments. Why when there is an Article to go into and become a part of our State Constitution it ought to have its regular and proper readings. I deny that this Committee has anything to do. This Committee might as well take up last years almanac and consider it as to consider this Article which is now before us. It cannot be before this Committee until it comes in the regular channel. I deny that you can take up whatever you find upon your tables, and bring before this Committee; suppose you had gone into the Committee room, and had taken this bill out when it had never been before this Convention—could you do that? No sir, I claim that this matter would be right, just as much as it is right for us to consider this Article which has not come to us in the regular and prescribed manner. I deny that this paper is here at all.

Mr. HASCALL. If the gentleman who has just spoken had been speaking of the Legislature, perhaps his objections might apply. We voted to go into Committee of the Whole upon this Article. We are now in Committee of the Whole upon this Article, and if we report favorably, and the Article is embodied in the Constitution, no one will deny its legality and validity. I am in favor of going ahead and finishing up this matter, and report back our action to the Convention.

Mr. MAXWELL. Mr. Chairman, I think rule 39 settles this matter, this rule reads "upon propositions being committed to a Committee of the Whole, they shall be first read throughout by the Secretary. After report of said Committee the proposition shall again be subject to debate or amendment before a question is taken". This rule seems to refer to the Committee of the Whole. Now after we have discussed this question it must be reported to the Convention for its action and when it comes before the house they can do as they please with it. I trust the Committee will not rise.

Mr. NEWSOM. Mr. Chairman. I wish to ask how often this Convention can go into Committee of the Whole upon any one Article of the Constitution.

The CHAIRMAN. As often as they like.—The question is on the motion to rise and report progress and ask leave to sit again.

The motion to rise was not agreed to.

The CHAIRMAN. The Secretary will read the first section, hurry up.

The Secretary read the first section as follows:

¶ 1. The executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction, and Attorney General, who shall each hold his office for the term of two years, from the first day of January next after his election, and until his successor is elected and qualified; but when that day shall fall on Sunday, the term of office shall commence on the following day. They shall, except the lieutenant Governor, reside at the seat of government during their term of office, and keep the public records, books and papers there, and shall perform such duties as may be prescribed by law.

Mr. MAXWELL. Mr. Chairman. I move to strike out all after the word "they" in the sixth line, to and including the word "office" in the seventh line. The words that I move to strike out reads, "shall, except the Lieutenant Governor, reside at the seat of government during their term of office." As to the books, public records, and papers, they are to be kept at the Capitol, but there is no reason why the officers should be residents of the Capital. If this is done we will have to take men not so well qualified as we might have if they were not compelled to reside here. I cannot find any reason for such provision, and I find many of the States having no such provision, in their Constitutions. I think that is asking too much.

Mr. HASCALL. Mr. Chairman, I am in favor of the gentleman's motion, for there are good men who could be had as officers if they were not compelled to remove to the Capital.

Mr. WOOLWORTH. So far as refers to the persons I am in favor of the amendment, but so far as the books and records are concerned, I am not in favor of it. Suppose a man who is elected Treasurer lives in Omaha, if not prohibited he may think it is better to take his books there to perform his duties, and the same thing might be said of the Auditor, or any other officer, and much trouble ensue from such arrangement. The business of the State should be done at the Capitol of the State.

Mr. MAXWELL. With the consent of the second I will amend my motion so as to include only the residence.

Mr. LAKE. I would suggest Mr. Chairman, that it might be amended so as it would read "They shall keep the public, etc., at the seat of government.

Mr. WAKELEY. Mr. Chairman. I had drawn an amendment about the same in substance as the suggestion of my colleague, (Mr. Lake) to strike out all after the word "day" in the sixth line and the whole of the 7th line and insert "They shall respectively keep the public records, books and papers, pertaining to their offices at the seat of government."

Mr. ESTABROOK. I am sorry the Chairman has entertained anything of this matter. If this amendment is adopted the man who is getting as a Governor of the State a large salary for performing the duties of his office, may at the same time work in his store room or law office. I shall oppose the amendment. When there is a fugitive escaping from justice and it is desired to get the necessary papers, we do not want to be delayed by the absence of a State officer, but we want to find a man here to perform his duties. Let me suggest here in this Convention that if somebody will make the motion, I will vote for it, that this Convention negotiate for the beautiful chateau of the Ex-Governor's for a gubernatorial residence. It may be got on account and at reasonable terms, on a dicker.

Mr. KIRKPATRICK. Mr. Chairman, it strikes me that this motion is not proper. Why sir, there is no doubt that this Committee has considered this matter and that they consider it proper that those words should be in there. Now sir, what are these men elected for? It is to perform the duties of his office and here is the proper place for that purpose. Why sir, is it that county officers are required to reside in the county seat, if it is not because they have certain duties which must be performed there, and are we not going to require state officers to reside at the capital of the State? Why sir, the very idea of fixing a State Capital is to have a place to find the State officers and their records. It may not be entirely proper, perhaps pertinent to this discussion, but I will venture to say the Committee in reporting and making this report considered the salaries to be given to these executive officers, and took into consideration the requirements of this section. The whole thing was discussed there, the officers would be required to live at the seat of government, and in view of these requirements they take their salaries. We thought there was good reason why they should be required to hold their offices and reside there, of course the books and papers should be kept at the Capitol. Is an executive officer holding his office at the capital, is he not required by the Constitution to live there, and stay there? It strikes me sir, it would be highly improper to adopt this amendment.

Mr. WEAVER. Mr. Chairman, I fully concur with the gentleman from Douglas (Mr. Estabrook) and the gentleman from Cass (Mr. Kirkpatrick) that this amendment should not prevail and I think for obvious reasons. It is supposed generally that the seat of government is a place easy of access, it will be a fine thing indeed if a man living back in rural districts can be carrying on their private business and receive $3,000 or $4,000 a year for performing the duties of Governor. There are many who wish to see the Governor and all other executive officers, and there should be a place where they can be found, and where people can get easily. I am very sorry the Chairman of this Committee has consented to this amendment. It would be a very fine thing indeed for a lawyer in Omaha to be carrying on his business probably worth $5,000 to $10,000 a year, and receive an extra revenue in the capacity of Governor, seeking this office from the fact that it would add merely in a financial view. We want men in these positions who will give their exclusive and entire time to the carrying out of these important offices. I hope the amendment will not prevail.

Mr. PHILPOTT. Mr. Chairman, In regard to that part of the section proposed to amend. I think it is very plain and very easily to be understood:

"They shall, except the Lieutenant Governor, reside at the seat of government during their term of office, and keep the public records, books and papers there, and shall perform such duties as may be prescribed by law."

Now what object there can be in changing that or amending it, I do not understand, I do not perceive, unless it is to make the duties of the several officers less onerous than what is prescribed in this section. To whose benefit would that inure to the people, or to the officers? It certainly must be to those who hold the offices. I think it is not for us to consider in what way and manner we should so adopt this Constitution, or frame a Constitution as may inure to the benefit of those called upon to discharge the duties of the several offices which may be imposed upon them, but rather we ought to consider in what manner we shall frame the Constitution, so that duties to be discharged by the officers shall inure to the benefit of the whole people. It does occur to my mind that to have those officers reside at the Capital, the seat of government, and have all their books and papers kept there will certainly be more to the benefit of the people than otherwise. Such being my opinion of the matter, I hope the amendment may not prevail, and that the section should be passed as it now stands.

Mr. THOMAS. Mr. Chairman, I am opposed to the amendment of the gentleman from Cass (Mr. Maxwell.) The latter part of the section reads "and shall perform such duties as may be prescribed by law." I understand the gentleman does not propose to strike out that which requires them to reside at the seat of government. How can this Convention know what duties are prescribed by law? These officers should reside at the seat of government, the officers mentioned in this section should certainly reside at the seat of government. The offices of Governor and other offices here are not only ornamental, they are intended to perform certain duties, they ought to give all their duties to the State, we propose to pay them a salary sufficient to induce them to give their time to the State. If that is the case sir, where could they perform their duties better than to reside at the seat of government, it is a place to which all the citizens can go at any time and find the officers there. For these reasons, I wish the article to remain as it is. I would like to call the attention of the gentleman that this article is adopted in the Constitution of Illinois, that requires the officers to reside at the Capital.

Mr. LAKE. Mr. Chairman, When the gentleman from Cass (Mr. Maxwell) first suggested his amendment to this section I was rather favorably impressed with it, but on reflection I have come to the conclusion that the amendment ought not to prevail. In looking at this section as reported by the Committee, I am inclined to think that the best interests of the State will be subserved by retaining it as it came from the hands of the Committee. The only reason that can be urged to sustain the position taken by the gentleman from Cass (Mr. Maxwell) is this, that the duties may be performed just as well by a deputy, and the absence of the person holding the office will make no material difference. It must be borne in mind that is not the intention of this Constitution as it shall go from our hands. I infer from remarks made, that officers shall be paid such salaries as shall warrant them in leaving their business and vocation and performing such services as may be required at their hands. Who is it that the people elects to perform the duties of an office, is it the person whose name is placed upon the ballot, and deposited in the ballot box, or a deputy that he may choose to employ? Doubtless the best interests of the State requires that he who is elected to fill any responsible office, who is paid for his duties by the State, shall perform them so far as he can in person, of course permitting him to employ deputies to assist him in the performance of those duties, but that he shall have a supervision, that he shall be accessible at all times to the people of the State, whose servant he is for the time being, wherever they desire to transact business with the Treasurer or Auditor or Superintendent of Public Instruction, that they may find the person whom they elected at his post of duty, with whom they can transact such business personally. I am inclined to think that if he were not required to reside at the seat of government, an officer would find it very convenient to be at home with his family and if he reside at the seat of government he would find it very convenient to be here. I am therefore inclined to the belief that we had better let this provision stand as it came from the hands of the Committee, and I trust the Chairman of the Committee will adhere to the section as reported by him, and assist in sustaining it as we find it.

Mr. MAXWELL. Mr. Chairman. The amendment I proposed does not prevent the officers from living at Lincoln, or from discharging the duties of the offices there; that is still to be the seat of government, it proposes to remove the fact that they shall be required to remove to the seat of government. A large majority of these parties would select to move. Suppose you want to elect a Treasurer, a man you can trust in every respect, whose word you know is as good as his bond. A man of that kind may go where he resides, you cannot begin to remove him to the seat of government, it is no object to him whatever, but, if you elect him State Treasurer, he will see the duties are discharged. Now our State has had some experience with such men as those; we had one man Treasurer in Omaha several years, and there is quite a number of others in the State of the same class, men who can be relied upon. The duties of the office of Auditor perhaps requires personal attention; it is to his interests to remove to the Capital, it might be so with any officer. You say you propose to pay the Governor $3,000 a year; the Convention has not agreed upon the amount to pay him. I do not know that it is necessary to pay any of these officers more than their services are absolutely worth; the salaries paid in some States is not more than one third, or half what we propose to pay. The gentleman speaks about the case where application is made for a fugitive from justice, the Governor of our State is frequently absent, and requisitions are always sent. That is well known to be the case, it is so in every office I presume, I have known of it being so in other places. I say when you require these parties to remove to the seat of government to live there, you confine the officers to a few men, or you exclude a certain class who absolutely would not take the office, so that that class is entirely excluded. A large majority of that class who are excluded are the men who, if elected officers, would make the best officers. It seems to me, there is no necessity of putting a provision in the Constitution excluding this class. All the State requires and asks is that the duties of the office be discharged faithfully.

Mr. ESTABROOK. I would have nothing further to say on the merits of this case, had it not been for the suggestion of the gentleman from Cass (Mr. Maxwell.) He indicates that the Governor when he goes away may sign some blanks and leave them in the possession of his clerk or deputy; it makes the legal gentlemen of this house laugh, the very mention of it. Now, I would like to ask the gentleman from Cass and he is a good lawyer, whether he thinks that a requisition having been filled up for the signature of a Governor, has any sort of effect whatever on a writ of habeas corpus; and whether it is not in fact, a forgery of the instrument in the eyes of the law? I have been made acquainted incidentally of late, with the many things which have been loosely done in the State of Nebraska; and shall, as a member of this Convention, as far as will have any effect, see to it that things are done right and that records shall not only be kept here, but the man for whom I cast my vote shall be with the records. I insist that a writ of habeas corpus be not issued on a forged instrument, but that when the document is filled, the Governor shall affix his signature and not before. I do not intend that it shall go out from this Convention, through its reporters, that we assented to the idea that a man can be taken away on a forged instrument. It would be worse than blank paper; it would intimate that a great mistake had been committed.

Mr. MAXWELL. Mr. Chairman, in answer to the gentleman I will say that he well knows, I presume, that in some cases requisitions are filled up, leaving the application and the name blank but signed, and they are filled up for the purpose that in case of the absence of the Governor, that they may be filled out on a proper showing. When an instrument of this kind is signed by the Governor it comes in force. The Governor is not here all the time. He may go to Omaha, or Nebraska City and a requisition may be made out in his absence. I say if you are going to to make it incumbent upon the Governor to remain here we shall also require the Lieutenant Governor to remain here; so that if the Governor steps out of the office he must be here. It provides that whenever he is disqualified or during his absence, the Lieutenant Governor shall then be Governor. So that I think this objection raised by the gentleman falls to the ground. But that, Mr.

Chairman, is a very small matter, one way or the other. I presume there will not be more than one or two requisitions needed in a year. The only question is, is it necessary to have a Governor reside here when we never have a Legislature here for more than forty days in one year, while the other duties are merely ministerial. It seems to me there is no necessity for requiring the Governor to reside here, or the Auditor or any officer. He may be a good man, he may hold his office here, but he may live elsewhere. It seems to me, placing these limitations upon it that you exclude that class of men you desire to have elected to those positions.

Mr. TOWLE. Mr. Chairman, I too, am opposed to the amendment as introduced by the gentleman from Cass (Mr. Maxwell) and I am not in favor of allowing the Chairman of this Convention to be here and allow this to prevail. It is customary to have a Capital, which shall be as near the center of the State as possible. The object in that is, that the citizens of the State having business to transact with the State officers, may have a quick and easy egress to and from the Capital, and when they have obtained access to the Capital find the officers ready to transact business. Frequently the Governor has to decide the nicest points of constitutional law. And when we vote for a Governor we are presumed to vote for a man of ability and power, and equal to these points which may be raised. It may be that his deputy or clerk, who is competent, and perhaps only so, to write a good hand, is incapable of answering all necessary questions. Suppose an outbreak occurs, and a courier is sent here, will he, if the Governor does not reside here find that officer at the seat of government, or Richardson county, 150 miles from here, or in L' eau-qui-Court. It is no more than reasonable and right that he shall be found at the Capital of the State. Suppose a murder is committed, and it is necessary that the officers of justice be set upon the track of the murderer, it is not necessary that if the Governor is not to be found a requisition shall be issued. We give the Governor a certain salary, and we desire to make it not only a lucrative office. We ask that he and all the other officers should be resident where the records are. If we say these State officers shall not reside at the Capital, we might just as well say the judicial officers shall shall not reside in their districts; and when you take this position you may as well say an elector shall not be a resident.

The CHAIRMAN. Gentlemen, the question is upon the amendment offered by the gentleman from Cass (Mr. Maxwell.)

Mr. MAXWELL. I withdraw my amendment.

Mr. NELIGH. Mr. Chairman, I propose to strike out the word "first" before "day of January," and insert "seventh." The object is that according to the section as it reads here, it will be necessary for the Legislature to meet on that day and it would be generally inconvenient for members to spend their holidays and be here at the same time. And I think it will be as convenient to have it on the seventh day as on the first.

The CHAIRMAN. The question is to strike out the word "first" and insert "seventh", are you ready for the question?

Mr. ESTABROOK. I am not in favor of that amendment, but I am in favor of an amendment. I think somewhere we shall have some day upon which a political year will commence; and that should be a point of departure in all these matters. Officers commence their term at that time. And I think it, according to precedence in other states in the Union, is the first Monday. I think it should be the first Monday. If this motion does not prevail, I will move the the word "day" be stricken out, and the word "Monday" inserted.

Mr. KIRKPATRICK. Gentlemen will discover that that amendment is provided for further along.

The CHAIRMAN. As many as are in favor of striking out the word "first" and inserting the word "seventh", will—

Mr. WOOLWORTH. Mr. Chairman, the suggestion made by my colleague was considered in committee —that is that some day must be fixed for the commencement of the civil year. And it was thought, after not very considerable reflection, but after some discussion, that the first day of the year would be best, so as to make the civil year and the calendar year agree, and it was thought that the same might be true of the fiscal year; So that it may provide, by provisions, that the fiscal year would commence on the first day of the calendar year, and it was for that reason and that reason alone, that the first day of the year was inserted. This is the case in a number of the other States, and struck the Committee as being an exceedingly convenient arrangement.

Mr. HASCALL. Mr. Chairman, I have in my hand a copy of the New York Constitution, lately adopted, I find that section 21 reads as follows:

"The political year, and the Legislative year shall begin on the first day of January."

That is all there is of it, they seemed to think that that covers the whole ground.

Mr. NEWSOM. Mr. Chairman, It may be we shall have to consider that matter again. It is useless to discuss it now.

Mr. THOMAS. Mr. Chairman, It seems to me the Illinois Constitution provides the Legislature shall meet on the second Monday in January.

Mr. LAKE. Mr. Chairman, I see no necessity for making any change in this section. It provides, first, that these officers shall hold, each, for the term of two years from the first day of January next after their election, or until his successor is duly elected and qualified. If the Legislature should not convene until six weeks after the 1st day of January, their term of office would commence on that day, and they hold for two years from that day. It seems to me it is good enough, just as it is.

The CHAIRMAN. The question gentlemen is to strike out the word "First," in the fourth line, and insert the word "seventh."

The motion was not agreed to.

Mr. ROBINSON. Mr. Chairman, I move to strike the fifth and sixth lines down to the word "day."

The CHAIRMAN. Gentlemen, the question is upon the motion to strike out the 5th and 6th lines down to the word "day."

The motion was not agreed to.

Mr. THOMAS. Mr. Chairman, I move to strike out "the first day of January next after his election," and insert "the second Monday in January next after his election." I will add to that, Mr. Chairman——

The CHAIRMAN. The gentleman will reduce his motion to writing.

Mr. Thomas reduces the motion to writing.

Mr. WAKELEY. While the amendment of the gentleman is being reduced to writing, I will say a word expressive of my feelings with regard to this amendment. It seems to me the amendment of the gentleman from Nemaha (Mr. Thomas) should prevail, for conclusive reasons. If it requires the action of the Legislature to determine who has been elected to one of these offices, it would seem to be absurd to make his term of office commence the assembling of that body, and the vote had been canvassed and the result officially announced. I think that it is not correct that his term of office should be fixed at a date prior to the official count of the votes which declares him elected. I would say his term of office should commence on the second Monday in January after his election, and he should hold office for two years thereafter.

Mr. LAKE. Suppose the vote should not be counted before that time?

Mr. WAKELEY. Then the Legislature has not done its duty in that regard; but it is presumed that public officers always do their duty. Sometime must be fixed, and the question is whether we will fix it at a time earlier, or at the time fixed for the meeting of the Legislature which declares who have been elected.

Mr. WOOLWORTH. Mr. Chairman, the section does not, in the first place, attempt to define the time when the Legislature shall convene. In the second place my colleague (Mr. Wakeley) says that the Legislature is presumed to do its duty. Suppose they met the first day of January. It is presumed the first thing they would do, would be to go and count the votes, so that, if the Legislature should meet in the afternoon, they might know the next morning who their officers are.

Mr. TOWLE. If the Legislature convenes on the 7th day of January and the House of Representatives are to count the votes for Governor, for instance, it appears to me that his term of office should not commence until about a week after the meeting of the Legislature, because at a time of great political excitement for example a whole week might be occupied in forming an organization of one or both parties of the Legislature, and there can be no canvassing of votes until an organization has been effected by that body; and it seems to me, too, that the incoming Legislature should receive its annual message from the outgoing Governor.

He would know more what to recommend to that Legislature for their official action, having a better knowledge of the business of the State. Having the Governor's term of office commence, say a week after the convening of the Legislature, would allow that body time to canvass the votes, receive a message from the outgoing Governor and——

The CHAIRMAN. If the gentleman will permit me, I will state that the First section is still before the Committee. It has not been adopted by the Committee.

Mr. TOWLE. Do I understand the Chairman to state that the subject on which I was talking is not before the house?

The CHAIRMAN. The Chair so understands it.

Mr. TOWLE. Then I beg the pardon of the house.

The CHAIRMAN. The question is upon the amendment by the gentleman from Nemaha (Mr. Thomas.)

The Committee divided, and the amendment was not agreed to.

The CHAIRMAN. The question recurs on the adoption of the first section.

The first section was adopted.

The Secretary read the second section as follows:

¶ 2. The Treasurer shall be ineligible for office for two years next after the end of the term for which he was elected.

Mr. WOOLWORTH. Mr. Chairman I move to strike out the word "for" and insert the words "to said" in first line.

Mr. McCANN. Mr. Chairman, I would like to state that I believe it a good plan if we have a Treasurer who has performed his duty well, that at the close of two years he should give way for another who will perform the duties equally as well, we must look to the future and it is good for the treasurer to be changed every two years, and at the end of the two years, the first treasurer who has performed his duties well may be again elected, and so two good men during the whole history of the State can alternately perform the duties of this office.

Mr. GRIGGS. Mr. Chairman, I am opposed to the section as it stands, I do not see any reason why a person who has performed the duties of that office successfully may not again be chosen by the people to the same office. Only last week, I heard Governor Butler remark that he didn't believe that a Governor ought to be eligible to office for more than two years, for if he was he would spend the two years that he was in, in securing his election for the next term of office. I am not in favor of giving them this opportunity.

Mr. ABBOTT. Mr. Chairman. I would suggest that the words to be inserted should be "to the office of Treasurer."

Mr. STRICKLAND. Mr. Chairman. It is only a matter of phraseology and I am in favor of striking the whole thing out.

Mr. WOOLWORTH. I will accept the suggestion of the gentleman from Hall (Mr. Abbott.)

The CHAIRMAN. The question is upon the motion of the gentleman from Douglas (Mr. Woolworth,) to amend by striking out the word "for" and inserting the words "to the office of Treasurer."

The amendment was agreed to.

The CHAIRMAN. Gentlemen, the question is now upon the adoption of the second section as amended.

The second section was adopted.

The Secretary read the third section as follows:

¶ 3. The officers of the executive department shall be elected at the general election for members of the House of Representatives, to be held in the year 1871, and every two years thereafter, at such time and places as may be prescribed by law.

Mr. HASCALL. Mr. Chairman, I have an amendment which I wish to offer.

The CHAIRMAN. The gentleman from Douglas, (Mr. Hascall) moves to amend by striking out the word "the" in the first line, before "general election," and inserting the word "a" in place of it. To strike out the words "for members of the house of representatives," in the second line, and inserting in the same line after the word "held", the words "on the Tuesday succeeding the first Monday of November."

Mr. STRICKLAND. Mr. Chairman, unless the call for the Legislature is different from what it is now provided by law, I would favor the further amendment of this section. I will call the attention of the Convention to the fact that we had a general election last fall, and under this section we would have another this fall and every two years thereafter. The general elections ought to come together as much as possible. My idea is this, the Presidential election comes once in four years and we ought to arrange our State elections so as to come on the same years, and at the same time as the presidential elections, and then as we have an election every two years the other election will come every intervening two years between the presidential elections. It is a source of great expenditure that we have the presidential election on one year and the election of Governor on the next, and this might easily be avoided by electing the State officers this fall for only one year, or for three years. I am not prepared to say which would be best. This would bring the State and presidential election on the same years. These elections ought to go together, the election for President is in November, it is a proper time; the State elections are in October, only a month apart. We suppose people try to get out in the Presidential elections so in Congressional elections, so when state and county officers are to be elected; it is needless to put these numerous expenses upon the people while consuming time. Now it is being generally said, as we have no Governor but an acting Governor, that there will be an election provided for to fill the unexpired term, why not provide for an election to fill that unexpired term, fixing it on the same date as the Presidential election, so that after the first election they may all go together. I think gentlemen will see a good deal of sense in this proposition, by the way of everything, dollars, cents and the time of the elections. We have had so many elections in Omaha, city and county officers, Congressional, Gubernatorial and Presidential, (Mr. WOOLWORTH "and a great many prayer meetings") yes, and a great many prayer meetings. We have a constant fear of election all the time. I throw out these suggestions in a blunt way so that the gentlemen here will see the necessity of trying to throw these elections together.

Mr. KIRKPATRICK. The gentleman's amendment I believe fixes the time of elections which is not fixed in this section. I have a little to say on elections and shall give some practical experimental reasons why I object to the time. I see no good reason why the suggestion of the gentleman from Douglas (Mr. Strickland) should be adopted; that we should elect the President and the Vice-President of the United States, members of Congress and members of the Legislature all at one time, in fact, sir, I think I can see a good reason why they should not all be elected at one time. It is well known that when a President, or member of Congress is to be elected, a strong pressure is brought to bear upon the voters. I do not see a reason why we should elect all in one day, but I do see a reason why we should not hold our election on the second Tuesday in November, that is to make it come on the day of the Presidential election. Now, sir, it is in the experience of other states that it is not best to have those elections on the same day, even in Pennsylvania and New York they hold their elections shortly before the Presidential election. I have a primatic objection to that time. I have seen it in Nebraska when scarcely any man could vote on that day. We tried that when this territory was first organized, I remember one election when nearly all South Platte people were prevented from going to an election by a storm. In the State where I was brought up our elections were held in August, a pleasant month, then there was a full expression and fuller vote, and there would be here if we held our elections in the sunny part of the year. I object to the time being fixed so late.

Mr. STRICKLAND. Mr. Chairman, I have one other reason. As the matter now stands here would be two primary sets of elections all over the country, with two sets of State conventions, one year to nominate a delegate to Congress, and State officers the next year, I think they ought to be thrown together as before. Here is a great expense as gentlemen will see at once. Suppose the Convention should see fit to adopt this in the Constitution, to elect a Governor and Lieutenant Governor to fill the unexpired term and then at the next general election proceed to elect such officers as are provided for in the Constitution under this head, then it would come at a general election when there would be no necessity of having but one convention and one election.

Mr. LAKE. Mr. Chairman. I have always been accustomed, ever since I have had a vote, to attend elections on the second Tuesday in October, but I never could see any reason in having two general elections in the State so near together, as the second Tuesday in October and first Tuesday after the first Monday in November, when the Presidential election occurs. It makes a useless expenditure to the State, a very great expense, not only in the actual money expended in conducting the elections, but in calling out the entire voting population of the State to attend the election. I am in favor of changing that hereafter. If this amendment is adopted we shall have our general election for State officers upon the same day as that provided for the Presidential election, so that in those years when the President is to be elected, our State election for State officers shall fall upon that day, and that two elections may be conducted together. It will certainly be a great saving of expenditure to the State, and time to the people of the State.

Mr. WOOLWORTH. Mr. Chairman, In order to accomplish the object of the gentlemen, it does not seem to me necessary to make any change in this particular part. I apprehend it is the intention to elect State officers and members, at any rate of the lower House, on the same day, and when you fix that day, you fix the day for the election of officers of the executive department. So far as that matter is concerned, it does not seem to me necessary to make any amendment to this section, but the President of the Convention has made a suggestion, I do not know whether he has brought it out so that it is clearly apprehended by all members of the Committee or not, at any rate I beg leave to occupy the attention of the Committee while I state what it is as I apprehend it. He is desirous of having the election of State officers and also the members, at any rate of the lower House occur on the same day, of course once in four years when the Presidential election occurs. The State officers would also be elected on the intermediate two years, but on the same day of the year. Now the section as drawn provides for an election this fall, and then it provides for an election of State officers two years from this fall, that would be in 1873, so that at no time would the election of State officers come on the same year as the election of President. What is desired by the President of the Convention is that the election of President and members of Congress, and the election of State officers and members of the lower House of the Legislature shall come, not only upon the same day but upon the same year. Now, how is that to be accomplished? It may be accomplished in one or two ways; you may provide if you determine to have a clean sweep of these officers, for the election this year of officers to hold their office for three years, or you may provide that the officers who shall be elected this year shall hold their office but one year, and then there shall be another election of State officers who shall hold their offices two years more, either of those ways would accomplish the object; or you might provide that there should be this fall a special election of Governor and Lieutenant Governor to fill the vacancy that has arisen in the office of Governor, and fill the office created by the Constitution, and let the other officers of the Executive Department hold over for a period of one year. There is a good deal that may be said in favor of bringing the election, once in four years, of President and State officers together, a good deal that may be said in favor of it, it is a matter that did not occur to the Committee when this matter was before them. I have made this statement not with any view of urging upon the Committee any particular opinions upon this subject, but merely to state to them, that if any amendment be made in the section, this seems to me to be the proper one, to fix the day of the year more definitely than it is now fixed. You leave in this article a day uncertain, or rather to be made certain by a reference to the time for the election of members of the lower House of the Legislature, not to modify the section in that particular, but if any modification is to be made to provide for the term of office of officers to be elected this fall.

Mr. WAKELEY. Mr. Chairman, I think my colleague (Mr. Woolworth) is entirely right in reference to the propriety of this section, as it now stands, and I think, with him, that if anything is to be done to remedy the inconvenience spoken of by brother delegates, of holding so many elections, it must be done by changing some other provisions of the Constitution. While we are speaking upon this subject now, it is well to consider, generally, what will be necessary in order to put this Constitution into full and complete operation when adopted. It seems to me essential that there should be an election this fall, not only of Governor and Lieutenant Governor, but of members of the Legislature. We will all agree, I think, that this Constitution will make such radical changes in the frame work of our government, that a session of the Legislature next winter will be indispensable. Then, if it be desirable to provide that our general elections and our elections for Representatives in Congress shall occur in the same year, it must be done in the manner suggested by my colleague, either by providing that those first elected shall hold for one year only, or that they shall hold for three. I think, at this time, I would be inclined to favor the plan of electing the Governor and Lieutenant Governor, and members of the Legislature for one year, and the entire State ticket and another Legislature in 1872, at the time of the Presidential election; and thereafter electing an entire State ticket, members of the Legislature and Representatives in Congress, in even years. So that our State elections coming in the Presidential year, only one election will be necessary. But, for the present, it is sufficient I think, that we act upon the section now before the Committee, without special reference to what we may see fit to provide with regard to these matters we have been discussing. It seems to me necessary that there should be an election this year for a portion of these officers, to say the least, and for representatives and members of the State Legislature.

Mr. STRICKLAND. As this resolves itself into five or six subjects I withdraw all I have offered.

Mr. HASCALL. Mr. Chairman, If this section is adopted by the Committee and reported back to the Convention, of course the question will arise then upon the adoption of our report by the Convention. This is its best remedy—we have either to adopt this and consider it when it comes in regard to the one year term, or fix it now. The amendment I introduced does not go to the extent my colleague (General Strickland) would. The only change is that we will fix the time. We will say at the general election to be held on the Tuesday succeeding the first Monday in September. The gentleman from Cass (Mr. Kirkpatrick) has referred to the severe weather he has seen which has prevented electors from going to the polls, and seems to think that is a very serious objection. I do not know of any such severe weather in Nebraska. Further, we claim to be a progressive people, and I believe we are. Most of the States are adopting one time for holding general elections, and it has been a subject of debate in Congress whether a law shall not be passed requiring elections for Congressmen to occur on the same day throughout the United States. And such a law will undoubtedly be passed within a few years. No one will question but what Congress has the power to determine that question. It is right and proper that it should be so. And as a majority of the States have adopted the idea sought in my amendment, I think we ought to select the same time for ours. The reason it is thought proper to insert this at this time is, that we cannot anticipate other articles intended to go into the Constitution at this time. The welfare of the State demands that new officers, precinct, county, district and State, shall be appointed. And I am satisfied, upon reflection and due consideration, that a majority of this Convention will take the same view of the subject. Then the question arises, and we must determine it now, because by adopting this section we commence the regular terms which are to continue as long as this Constitution shall last, because it commences from this date, consequently if we wish to commence on another basis, as suggested here, that we elect all these officers for one year, and make the regular term commence from a year next January, we must determine it now. We cannot postpone its consideration. The question would arise as to whether we will elect all these officers for one year, and make the regular term commence in January next; or whether we will elect for two years at the fall election and have the election of Governor fall on the off year of the Presidential election. I think it ought to fix the time in this section, and those who hold the idea that the Governor should be elected at the same time as the President, should insert the terms that will meet their idea.

Mr. PHILPOTT. Mr. Chairman, I rise to reply to the gentleman from Douglas (Mr. Hascall) on one point —that of this being the time to fix this thing; that if the report of this Committee is adopted, there will be no time to change. I refer him to rule No. 50, which reads "Provided, however, that this rule shall not be so constructed as to prevent a majority of the Convention from taking up the report of said Committee, and making any alterations or amendments thereto." Such being the case I do not know that I am prepared to take any particular part in determining, at this time, at what time the various officers should be elected. I think it a matter well worthy of consideration, and I would rather it be deferred for the present. I think I shall be in favor of the amendment.

Mr. HASCALL. Mr. Chairman, I wish to refute the idea just advanced. The object of going into Committee of the Whole is for the purpose of perfecting the bill without incumbering the journal with amendments. It is true after the Committee arises and reports back its action it is subject to amendment. If you perfect it now it is reported back; then all you have to do is to adopt what the Committee have reported back. The object of a Committee of the Whole is to make amendments. It is a common saying that here is the place where many look to "set themselves on record."

Mr. SPRAGUE, It seems to me the only important matter is the fixing of the day. So far as these elections are concerned if we are to adopt this article reported by the Legislative Committee there is to be an election each year for representatives, and it does not matter if we have an election in each year, or whether we are to vote for Governor or Representative in Congress, or President all at the same time or not. It does not increase the expense at all by making members of the Legislature; and it them come the same day, because we are to have an election each year for seems to me the only matter of importance is to fix a day upon which a general election shall be had in each year. I shall be in favor of the amendment of the gentleman from Douglass, (Mr. Hascall.)

Mr. ESTABROOK. Mr. Chairman, I don't know but that I have forgotten the rules of parliamentary usages; but my idea of the matter is this; we pass over this Article, section by section, and when we have gone through it in this way, we then act upon the whole Article. The gentleman from Saunders (Mr. Sprague) has suggested about what I intended to say. It seems to me it is not proper for us to fix the time, here, when we shall hold our elections. It would not be symmetrical for us to fix the time of holding elections, for the reason that another Article fixes the time for the general election in its proper place. It is not up now for consideration. Now in regard to the matter of electing our State officers at the same time the President of the United States is elected; I don't think it is best. If we are only to have a general election every two years, I admit there would be something saved in the way of expense by this course, but as we are to have an election every year, I don't see as it makes much difference. I believe it is more wholesome to have the Gubernatorial election come in some other year from that of the Presidential election, because were it otherwise, you fit these matters to the Presidential cut, and whip them all into the traces. I believe, myself, there is health in stirring up the political elements, as the winds stir up the other elements. Let the officer of the people be answerable to them at early, short and convenient periods. I say, I think rather than do this—joining the two elections—I would separate the presidential election from everything, so that our own local elections shall run on their own merits, and not be affected by outside influences. I shall vote against every amendment.

Mr. WILSON. Mr. Chairman, I seems to me they have fixed this thing already. It seems that the gentleman from Douglas (Mr. Estabrook) says we must have an election every year. It seems to me it is a very good thing for the State to have an election of State officers and county officers on the same day as the Presidential election. The gentleman from Douglas (Mr. Estabrook) seems to think there will be a good deal of wire pulling if this was the case, but I think you can get as good officers on the day of the Presidential election, as on any other day.

Mr. STRICKLAND. Neither the gentleman from Douglas (Mr. Estabrook) or the gentleman from Saunders (Mr. Sprague) answers this objection. When you come to elect State officers you jar the whole State. You can agitate too much. The wisest man who ever governed has said "you can govern too much." This dabbling in the filthy pool of politics is the cause of a great loss of time, and a great expense to the people and the fewer elections we have the better for us. I think there is wise reason in this plan to have our general election come on the same year, and at the same time as the Presidential election, and then only once in two years will the people have to go through with the bad feeling and excitement of a general election. The election of county officers does not affect the State at large. The noise of the election of county officers does not reach outside of the county limits. It is only at the election of State officers, that the people are worked up with political excitement. Do you want this to come oftener than once in two years? (Laughter.)

Mr. ESTABROOK. I do.

Mr. McCANN. Mr. Chairman, I think it would be well for the people to fix the time of these elections, as they are considerably interested in the matter. I have seen it snow and freeze in this State on the day of the Presidential election. There are a great many people who are in a bad state of health, and cannot go out in bad weather; sometimes it happens that that day is pleasant, but oftener it is not. In some places they have to ride often, ten or twelve miles to get to the place of voting, and now since the general (Strickland) is going to have the ladies vote—

GEN. STRICKLAND (interrupting) I am not going to have the ladies vote.

Mr. McCANN. Since General Strickland is going to have the ladies vote, I think he ought to have a fine day for them to go out and do their voting.

Mr. KIRKPATRICK. Mr. Chairman, I think the Committee (Executive) did not deem that they ought to report a section in this executive bill, giving the time of holding the general election. I think the section ought to stand just as it is, and the time for holding our general elections had better be fixed in some other report. There are a good many States which vote on the same day as the Presidential election, but perhaps the temperature has something to do with it. I think it is better to provide for the election of these officers at the time of the election of county officers. I see no reason why this amendment should go into this section.

Mr. ROBINSON: Mr. Chairman, I call for the reading of the section again.

The Secretary read the section as follows:

¶ 3. The officers of the executive department shall be elected at the general election for members of the House of Representatives, to be held in the year 1871, and every two years thereafter, at such time and places as may be prescribed by law.

Mr. CAMPBELL. Mr. Chairman, I have an amendment to the amendment. I have written it out to be attached as an amendment to the section as follows: "except the office of Superintendent of Public Instruction, who shall be elected on the first Monday in May."

Mr. MANDERSON. Mr. Chairman, I understand that the amendment of the gentleman from Douglas (Mr. Hascall) has the effect to fix the election on the same years as the Presidential elections.

Mr. HASCALL. I will say that it does not, it fixes it on the same day of the year, but if any gentleman desires it to come on the same years it will have to be amended so as to read 1872 instead of 1871 or else make the term of office of the first officers elected only one year.

Mr. STRICKLAND. Mr. Chairman. I have that amendment in a few words to be added to the section: "Provided the officers to be elected at the first general election shall hold their office for only one year."

Mr. CAMPBELL. Mr. Chairman, I wish to explain my amendment I offer it for the simple reason that I want to take the election of school officers out of the political world.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Douglas (Mr. Hascall.)

Mr. STRICKLAND. Mr. Chairman, the gentleman from Otoe is preparing an amendment to the amendment, if the Chair will wait.

The CHAIRMAN. The Chair will wait.

Mr. STRICKLAND. I will withdraw my request in order to get an expression from the Convention, first, upon the amendment of the gentleman from Douglas (Mr. Hascall.)

The CHAIRMAN. Gentlemen, the question is on the amendment by Mr. Hascall.

The amendment was not agreed to.

The CHAIRMAN. The question is now on the amendment offered by the gentleman from Otoe (Mr. Campbell.)

Mr. McCANN. I hope the gentleman will withdraw his amendment, in order to allow the gentleman from Otoe (Mr. Newsom) to offer his amendment.

Mr. CAMPBELL. I will withdraw my amendment.

Mr. NEWSOM. Mr. Chairman, I desire to offer an amendment to strike out"1871" inserting "1872" and adding "provided that an election shall be held in 1871 for the officers of the Executive Department, at such time as this proposed Constitution shall be submitted to the people, such officers to be elected for the term of one year."

Mr. WAKELEY. I would suggest that the words "or until their successors shall be qualified," be added.

Mr. NEWSOM. I accept the suggestion.

Mr. STEVENSON. Mr. Chairman, now I really don't see anything that is to be gained by changing this section. Now if they are elected for one year the election will come off in October and the next year it will be in October and the Presidential election will be in November, and I hold Mr. Chairman that it will make no difference in the expense. I believe we should elect these State officers at a different time than that in which we elect a President. Because then political excitement rises pretty high and we are likely to overlook the State officers in our interest for the United States officers. I think that is a good reason why we should not have them on the same day or the same year. If they come on the same year and time, these State officers must be elected for four years, or else we cannot economize much as that appears to be the object of some of the gentlemen. I am in favor of having an election every year and having this thing well ventilated, or in other words I am in favor of having a kind of political syringe and filling it with salt and water and squirting it all over this filthy thing to purify. it. (Laughter)

For this reason I will oppose this amendment, for I think there is hardly any necessity that the election of Governor should be on the same day as the election of President. Is it because there are certain parties who have got ends to gain by this thing, it may be so, but I hope they can do it deliberately and without desiring to obtain those ends, I think they are trying to attain by this section.

Mr. WOOLWORTH. Mr. Chairman, the views expressed by the gentleman from Cuming (Mr. Stevenson) commend themselves to my judgment. We all know that in a Presidential election issues of a certain character are presented for our consideration, and that at a State election other questions are presented, and we all know that these matters of State policy are overlooked, and that the character of the State officers, and candidates for State offices are not always what they would be if the election was held at any other time than that they elect at present. Now, if the policy of the parties in respect to State matters and Federal matters were precisely the same, there would be every reason for merging the elections, but upon these matters of State policy what would commend itself to a republican in Nebraska might not at all commend itself to a republican in Illinois, or New York; and just so with regard to the democrats. State policies are limited to the State and each party pursues its own policy in its own State without reference to the views entertained by its own partisans in other States, so that a State election might very properly be held on another year from that when the Presidential election is held. I do not conceive, that a modification, as seemed to be suggested by the gentleman from Cuming (Mr. Stevenson), I do not precisely see how the matter one way or another would affect the relative strength of the parties, but I can see how it is very easy for matters of State policy to be quite forgot, quite overlooked, when the more important, and more discussed questions of Federal policy are before the community. It does seem to me it is better to let the Article stand as it is, rather than make the change that has been proposed.

Mr. LAKE. Mr. Chairman. While I was in favor of fixing the time in this section, when the election should take place, and fixing it upon the same day as is fixed by law for the holding of the Presidential election, to wit, the first Tuesday after the first Monday in November, I am entirely unwilling that the section should be so modified as to bring the election of Governor and our other State officers upon the same year that the Presidential election takes place. I prefer it should remain as it is; that the first election should be this coming fall, and should be for two years, and that thereafter the election of these officers should take place in an odd year, so that it may never fall upon the year when the President is to be elected. I think a State election is entirely swallowed up and lost, at it were, if it were to take place upon the same day that the President was to be elected and while I am in favor, as I before remarked of bringing the elections together, when they would naturally fall together by leaving the section as it is, that is the election of the members of the Legislature, and perhaps to fill any vacancy that might occur, the election of such officers upon the same day the President is elected. I am entirely unwilling that our principal State officers should be elected upon that day unless it should be to fill a vacancy. It seems to me that the section as it stands is better than it will be by any amendment that can be attached to it, other than the one which was intended to obtain at this time an indication from this body, as to whether we should have two elections each year or not, or in those years, when the President is to be elected. The object was unquestionably to fix this time and take the sense of the House upon this question of having the election for State officers, in the year when the President is to be elected, fall upon that day, and in all other years to have it indicated in the same manner. I prefer to have the section stand as it is and to have a provision inserted in the Constitution at some proper place, fixing the time for the holding of our elections and to have them so that in no year can there be but one general election in the State.

Mr. MAXWELL. Mr. Chairman, It seems to me that the amendments proposed as improvements to this section, cannot be regarded as such.

Now, my friend General Strickland complains, during the argument here, of the excitement attending primary elections and wished to have as few elections as possible of that character, at the same time he comes in and advocates an election for the short term of one year for State officers. I think he applied no reason except that next year is Presidential election. It is desirable that we elect our best men for State officers, that we should not be urged by party considerations; the first qualification ought to be, he should be a good man, we should all agree upon that. It is sometimes urged you should spare the money, that is right enough, the first consideration is you should nominate a good man. The object of having an election during the fall Presidential election might be urged as a reason, it is necessary to avoid the straight ticket in order to carry the election. Now I am in favor first of nominating good, number one men, and then electing that class of men. I do not think it well to have an election in the year of the Presidential election, it would be much better to elect these men this fall and then every two years so that it entirely separates these elections from the Presidential elections. Men come upon their merits and are elected on them, no consideration outside is used, therefore I hope that that amendment will not prevail.

Mr. STRICKLAND. Mr. Chairman. There is one obstruction that none of these gentlemen get over, they speak about the election for Governor and forget that, whatever happens, there will be an election for members of Congress next year, they forget that. My idea is to simplify, that the Governor should be elected for one year, then when we have to assemble to elect a member of Congress we also start in at that period for State officers. The gentleman from Cumings is entirely mistaken, that is the rule we have worked under, we have always elected our State officers when we elected a member of Congress, they have all come together; there has been one State Convention that nominated the officers for the State and Congressman. What I am trying to do here is so to regulate the elections that they shall be held as they have been heretofore, not to change it, As was first said by Mr. Woolworth this change could be made, that the executive officers be elected now for three years, at which time we will have to have a Congressional election. What is proposed by the Article is that you shall have a State election every year, one year for member of Congress, the next for State officers. The amendment means that you shall elect the executive officers for one year and then come to a time when you have to elect a member of Congress and re-elect all anew from that period for two years. I think I am understood by the gentlemen, it is simply a question whether you will have a State election every year or whether you will have a State election, after we have provided for the first one, every succeeding two years.

Mr. LAKE. Mr. Chairman, I understood the gentleman before. I believe it is generally conceded, at all events from what I have heard expressed by members of this Convention, that we must of necessity have a general election throughout the State every year. I believe it is generally ceded, from the expression of opinion here, that we are to elect members of the Legislature every year, at least those of the House of Representatives, that will be a general election throughout the State. I have also heard it suggested that there was a probability there would be certain members of the Legislature, of course I only speak from rumor, that there shall be certain members of the Legislature elected by the State at large, they will be members of the Legislature representing the State at large if that plan be adopted, at all events, Mr. Chairman, it is conceded, and must be conceded, that we are to have a State election once in each year. Now, what is to be gained by the plan of the gentleman; it is only to throw the election of the important State officers into that year when there will be an influence brought to bear upon the politics of the State which ought to be avoided if possible, to wit, national politics, that should be avoided, the election, perhaps, of Representative to Congress would not be of that character, but in order to avoid all that kind of influence in order that our State election may not be sunk utterly out of sight, be lost sight of, and swallowed up in the more important one of President of the United States. I propose, and other gentlemen upon this floor propose, that the election of those officers shall never take place at the same time as an election for President of the United States, except there be a necessity for filling a vacancy, but that our Governor, Secretary of State, Auditor and Treasurer shall be elected in an odd year which will render it absolutely impossible that their election shall fall upon any year when the President is elected; that is all proposed, it is merely to separate these two elections, the election of our principal State officers from that of President of the United States, and that is all that we ask for.

Mr. STRICKLAND. The election of Representative from Douglas county does not concern the State, and there is no Congressman running, and no Governor. Next year there will be. Then there will be a State election and it embodies the two, but there is only a State election once in two years.

Mr. LAKE. It is true. I understand the gentleman. But we differ in this—we are all agreed there must be State elections and if there are offices to be filled, where vacancies have occurred, they are to be be filled at that election. Now, I say it is no more expense to elect these officers at one election, where there is one in each precinct throughout the State, inasmuch as we are to have these elections uniform through the State each year. We say, that is those who agree with me, that the election of our principal State officers should not take place on the same day as the Presidential election takes place; and we are in favor of the election of our State officers in a different year. And that will *accomplish just* what I desire, and what others on this floor desire, and as provided in this section now—an election to be held at the general election in 1871 and every two years thereafter. That will bring it in the odd year, and check having it fall in the year when the President is to be elected.

Mr. NEWSOM. Mr. Chairman, I withdraw my amendment.

The CHAIRMAN. Gentlemen, the question is upon the adoption of section three.

Section three, as amended was agreed to.

Mr. CAMPBELL. Mr. Chairman, I move the Committee now rise, report progress, and ask leave to sit again.

The CHAIRMAN. Is the Committee ready for the question?

Mr. ESTABROOK. It seems to me there will be no more time for the sitting of Committees and I will be in favor of running the Committee a little longer.

The motion to rise was not agreed to.

The Secretary read section four, as follows:

¶ 4. The returns of every election for the above named officers shall be sealed up and transmitted, by the returning officers, to the Secretary of State, directed to "The Speaker of the house of Representatives," who shall, immediately after the organization of the House, and before proceeding to other business, open and publish the same in the presence of a majority of each House of the general assembly, who shall, for that purpose, assemble in the hall of the House of Representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal, and the highest, number of votes, the general assembly shall, by joint ballot, choose one of said persons for said office. Contested elections for all of said offices shall be determined by both houses of the general assembly, by joint ballot, in such manner, as may be prescribed by law.

Mr. MANDERSON. Mr. President, I move to strike out the words "general assembly," and substitute the word "legislature."

The CHAIRMAN. The alteration will be made if there is no objection.

Mr. WOOLWORTH. Mr. Chairman. I object to that change. I think it is better to leave that until we have adopted the Legislative Article and we find out what, in that Article, the Legislature is called. After we have adopted it and know what the Legislature is called, then this and that may be made to agree. That is a matter for the Committee on Revision and Adjustment.

The CHAIRMAN. The question is on striking out the words "general assembly," and inserting "legislature."

Mr. ESTABROOK. Mr. Chairman, Is it not the custom at christenings, to have the baby present? We have not the child here.

Mr. LAKE. We have one of them. They are twins.

The question being upon Mr. Manderson's amendment to strike out "general assembly" and insert "legislature," a division was ordered.

The Committee divided and the amendment was agreed to.

The CHAIRMAN. The question now recurs on the section as amended. Is the Committee ready for the question?

Mr. ABBOTT. Mr. Chairman, I move to strike out the words "and the highest," between the words "equal" and "number."

Mr. WAKELEY. That is correct as it is. It draws a distinction between those as in the highest and those in the lowest. The language is similar to the language in the Constitution of the United States, in the reference to the President and Vice President.

Mr. WOOLWORTH. If you strike out the word "highest" you might have one man having the highest number of votes, and two others having an equal but lower number of votes, and you would be obliged to elect a Governor from the two, and thus cut out the one having the highest number.

Mr. ABBOTT. I withdraw the amendment.

Section four as amended was agreed to.

The Secretary read section five as follows:

¶ 5. No person shall be eligible to the office of Governor or Lieutenant Governor who shall not have attained the age of twenty-five years, and been for two years next preceding his election, a citizen of the United States and of this State. Neither the Governor, Lieutenant Governor, Auditor of Public Accounts, Secretary of State, Superintendent of Public Instruction nor Attorney General shall be eligible to any other office during the period for which he shall have been elected.

Mr. WILSON. Mr. Chairman, I move to strike out the word "two" in the fourth line, and insert "five."

Mr. WOOLWORTH. I hope that amendment will not prevail. The provision five would be very proper one in an old State which has been pretty well settled but in this new State, where so many people are constantly coming in, it might prove, a great many times, very unjust; and the wording of the provision might be detrimental to the State. I hope the provision will continue to be two, and not be changed.

Mr. McCANN. I think the amendment of the gentleman from Johnson (Mr. Wilson) is intended to apply to citizenship in the United States; not to this State.

Mr. WILSON. My object is that he shall be five years a resident of this State.

Mr. MANDERSON. I hope the amendment will not prevail. The section, as it now stands will require the residence of two years and a half in this case of the Governor and Lieutenant Governor. He must reside in this State long enough to acquire citizenship. Then he must live two years a citizen of the State. I think there is much point in the argument of my colleague (Mr. Woolworth), that while five years' citizenship in the State might well apply in older States than this; yet here, where we are constantly receiving an influx of men able enough to occupy the office, we should not put this in. I have been a resident of this State less than two years, not that by that I mean to say I expect to be a candidate for the office of Governor, yet I would not like to be debarred from seeking the position if I so wished. Yet I believe when a man becomes a citizen of the State of

Nebraska he should be entitled to the rights and privileges enjoyed by every citizen of the State. I do not believe that because he is an old settler he should have the greater privileges. I recognize the credit that attaches, and that is due to those gentlemen who have lived in this State for long periods. I put no such barrier as is proposed by this amendment, in the Constitution of the State. I do not know if I would be out of order if I relate a conversation I had with an old resident of this State. I was congratulating him on the fact of his being an old resident of Nebraska, having come here fourteen or fifteen years ago. Said he "that is a small matter for congratulation. For the last five or six years there has been something to come to this State for, some reason for coming, but when a man came here longer ago than that, there must have been some reason for his leaving the place from which he came." (Laughter.)

Mr. WILSON. Mr. Chairman, would not the man who comes right here from my country be a fine subject to act as Governor of the State of Nebraska, as he could do, as soon as he obtained citizenship, if this idea should be adopted. Now I am in favor of making this a still longer time, and requiring a residence here of five years instead of two years, in order to make a man eligible to the office of Governor.

Mr. KIRKPATRICK. I think a residence of one year in the State would be quite long enough. In our territorial form of government, a good many members of the Legislature had been residing in the State about 40 days; I think at least one half of the residents of this State has come in within two years, and I see no reason for excluding these from the right to hold office. I would like to reduce this term at least one year.

Mr. ESTABROOK. Mr. Chairman, I hope this will be made as perfect as the friends of it can make it, because when all is done, I propose to attack the whole thing. I ask such amendments as shall provide that the man who is worthy to cast a vote, is worthy to hold office ("that's right" "that's right.")

The CHAIRMAN. Gentlemen, the question is upon the motion to strike out the word "two" and insert the word "five."

The motion was not agreed to.

Mr. ESTABROOK. Mr. Chairman, I move to amend by inserting "an elector 25 years of age shall be eligible."

Mr. HASCALL. Mr. Chairman, I hope that will be adopted, for I am decidedly in favor of it. This is a new state, and we want people to come here and if people do come they are entitled to vote and if they are wanted to hold office, they ought to hold it. For my part, I am not so greatly opposed to "carpet baggers." They are always men of energy and enterprise and they keep matters stirred up. In fact, I believe "Carpet baggers" are the salvation of the country.

Mr. NEWSOM. Mr. Chairman, I am in favor of giving the right to hold office to a man as soon as he is capable of holding office; but I think the gentleman from Douglas (Mr. Hascall) puts it on a little too thick. (laughter) I am opposed to the amendment of the gentleman.

Mr. STRICKLAND. This amendment provides that a two years residence makes an elector?

Mr. ESTABROOK. Yes sir.

Mr. STRICKLAND. I do not think that is long enough time to qualify a man to hold one of our State offices. I think a gentleman ought to live in the State at least two years in order to make himself acquainted with the affairs and interests of the State. I know that in some countries, in Spain for instance, a person is often put at the head of the government who knows nothing at all about the concerns and affairs of that country; but this will not do in a democratic government. We want those who govern us to live among us and know what is to our best interests. We hardly want, I think, to elect a man to an office in Douglas county, who lives in Otoe, or Dodge county and who really knows nothing about us and our affairs.

Mr. PHILPOTT. Mr. Chairman, I desire the amendment read.

The Chairman reads the amendment.

The CHAIRMAN. Gentlemen, the question is upon the adoption of the amendment just read.

The motion was not agreed to.

Mr. WAKELEY. Mr. Chairman, I move to amend section 5 by striking out all after the words "this State." The sentence I propose to strike out, leaves a gentleman in office ineligible to hold any other office during his term. I don't believe that the fact of a man having been elected to one of our highest offices should disqualify him from holding any other office; if the people of the State see fit to confer another office upon him. I think should the people so confer it, that the officer has a right to receive it. I presume this provision originated with the idea that a person holding office might be intriguing for another office, and using the powers and advantages of his position to secure some other and higher place. I don't believe any mischief would arise from rendering each State officer eligible to some other place. If they should desire to hold other offices I don't see why they should be ineligible.

Mr. WOOLWORTH. My colleague states that the reason for the introduction of this provision, is for the purpose of preventing the intrigues in which an officer might indulge in order to secure an election to some other office. The time for which these gentlemen hold the State offices is not long, and it is only during that period of time that they are ineligible to any other office. It strikes me that it is eminently proper that when a gentleman has secured his election to one of these six important offices, he should be content for the term of two years. If we had but few men who want office, why then the suggestion might be very proper, and we might be driven to select a gentleman who already fill a State office, to fill some other important position, but I apprehend there is no lack of men who want office, in this country, and we are not driven to select gentlemen who have been elected to one of the six offices named in the sentence referred to, nor is the number of men who are capable to hold office limited. I think it is a good thing to deprive these persons whom we have elected to any office of the opportunity of seeking other public positions during the term for which they have been elected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Douglas (Mr. Wakeley.)

The amendment was not agreed to.

Mr. WAKELEY. Mr. Chairman, I offer the following amendment to insert after the word "office" in the fifth line these words "created by the Constitution of this State."

I will state, Mr. Chairman, the reason I have for the proposed amendment. There is no question of the authority to prescribe any condition of eligibility to any of its officers, but not of the officers of the United States, for notwithstanding the State Constitution rendering an officer ineligible, it has been held that such officer was eligible to Congress. I have no desire to have our Constitution appear opposed to the laws of the general government when it will not effect anything, but I prefer that our Constitution recognize this fact.

Mr. ROBINSON. Mr. Chairman, I think with the gentleman that we have the same meaning now as we would have if amended.

Mr. LAKE. I would like to ask my colleague (Mr. Wakeley) whether he thinks that can refer to any other than the officers created by this Constitution?

Mr. WAKELEY. I know that it has been designed in other States to refer to national officers.

Mr. WOOLWORTH. Mr. Chairman, the only occasion when this identical subject came up to be considered was when Mr. Trumbull of Illinois presented himself at the bar of Congress for admission. It was then objected that he was ineligible, because there was in the Constitution of that State a section like this one.

The almost unanimous decision was that the State Constitution did not refer to any other officers than those created by the Constitution, and after that was so decided the State of Illinois went on and enacted another Constitution containing the same language that is contained in this section. I don't think that the matter is open to any debate whatever, for I do not think that the words would modify it in the least.

Mr. McCANN. Mr. Chairman, The fifth section of the Constitution of the United States, I think it is, settles that matter where it makes the members of Congress the judges of the qualification of its own members. In this case I think it is not necessary to state this distinction, we are simply providing for the officers of the State of Nebraska and not for the United States. I think it should stand just as it is.

The CHAIRMAN. The question is on the amendment of the gentleman from Douglas (Mr. Wakeley.)

The amendment was not agreed to.

The CHAIRMAN. The question is

now on the fifth section as it stands.

The section was adopted.

Mr. SPRAGUE. I move that the Committee now arise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. MYERS. Mr. President, The Committee of the Whole have had under consideration the Article of the Constitution entitled "Executive," and have instructed their Chairman to report progress and ask leave to sit again.

Mr. President, I move that leave be granted to the Committee to sit again on this Article to-morrow morning, after the regular morning order.

The motion was agreed to.

Mr. GRENELL. Mr. President, I move to adjourn.

The motion to adjourn was agreed to.

So the Convention (at six o'clock) adjourned.

THIRTEENTH DAY.

Wednesday, June 28th, 1871

The Convention met at ten o'clock and was called to order by the President.

Prayer.

Prayer was offered by the Chaplain as follows:

God of all grace, be merciful unto us this day; give strength to our minds; give uprightness to our hearts. May we be Thy people; may we give Thee thanks forever; may we show forth Thy praise to all generations. Amen.

Reading of the Journal.

The Secretary read the Journal of the preceding day which was approved.

Communications.

Communications were received from the Auditor of State and read by the Secretary as follows:

State of Nebraska, Auditor's Office,
Lincoln, June 27th, 1871.

HON. SILAS A. STRICKLAND,
President Constitutional Convention.

Sir:

In reply to request embraced in resolution from your honorable body asking for a statement showing the expense of Insane up to this date, I have the honor to submit the following, under the several heads of expense, as shown from vouchers on file in this office.

Expenses previous to close of fiscal year Nov. 30th 1870	$25,312.72
Expenses paid since, fees of Sheriffs' Probate Judges, Physicians etc.	8,086.34
Expenses paid since, board and clothing	7,290.07
Expenses paid since, repairs of building	2,068.56
Expenses paid since, farm implements, trees, team, cows etc.,	1,420.90
Expense paid wages of employees	2,359.00
Expenses paid for fuel	5,455.00
Expenses paid drays	135.70
Payment for outstanding indebtedness of the Insane Asylum, act approved Feb. 10th, 1871	19,317.97
Total	$71,446.26

Respectfully submitted,
Your obedient servant.
JOHN GILLESPIE,
State Auditor.

State of Nebraska,
Auditor's Office,
Lincoln, June 27,1871.

Hon. SILAS A. STRICKLAND.
President of Constitutional Convention.

Sir:

In response to resolution from your honorable body requesting an itemized statement of expenses of State Government, also expenses paid to persons, etc., I have the honor herewith to transmit copy of General Appropriations Bill. "An Act making appropriations for the current expenses of the years 1871 and 1872," approved March 24th, 1871; also copy of "An Act making appropriations for the payment of the following persons." Approved March 28th, 1871.

Respectfully,
Your obedient servant,
JOHN GILLESPIE,
State Auditor.

An Act.

Making appropriations for the payment of the following persons:

Section 1. Be it enacted by the Legislature of the State of Nebraska. That the following sums of money, or so much thereof as may be necessary, be, and the same are hereby appropriated for the payment of the following claims:

FOR DRAYAGE.

To Bohanan Bros., for drayage for Governor's office............$9.50

FOR ASSISTANT JANITOR

To Samuel S. Hall.........$297.00

CELL FOR STATE CONVICTS.

To Douglas county for Building cell for State Convicts........$185.51

ALVIN SAUNDERS.

For services from March 4th, to March 27th, inclusive, 1867$66.75

NEWSPAPERS FOR LEGISLATURE.

To Nebraska State Journal, (Senate and House).............	$750.00
Omaha Tribune, 60 days 3 cents per copy..........	140.00
Omaha Herald	108.00
Omaha Republican.........	168.00
Plattsmouth Herald........	52.00

FOR FURNITURE FOR CAPITOL BUILDING.

To Dewey Trimble & Co., for chains for Senate and House	$240.00
Desks for Senate and House	660.00
To Milton Rogers, stoves for Capitol Building.....	802.10
To R. Hawk & Co., balance due and interest from January 1, 1869	402.50
To F. W. Hohman. Matting for Senate and House....	476.00
To J. E. Boyd & Bro., Chandelier Supreme Court....	80.00
repairs to Chandeliers etc.	92.55
To I. B. Compton, stoves, pipes, sundries and interest....	241.20

FOR REPAIRS ON CAPITOL BUILDING.

To S. Way & Co., for repairing roof, etc................	425.15
To N. A. Tyler, Inside doors, flooring, etc.	245.00
To S. Warfield, repairs on chimneys	7.00
To W. N. Smith, repairs on locks	9.50
To Leighton & Brown, Glass,..	97.20
To James P. Munson, repairs on well and cleaning same	45.00
To Frank Keyes, for repairs on chimneys, etc.	80.00

FURNITURE, PAINTING AND ETC. FOR OFFICES.

To Dewey Trimble & Co., furniture for Governor's room...	$1,223.10
To James A. Bailey, painting etc., Governor's office	250.00
To Dewey Trimble & Co., furniture for Adj't Genl's office	323.75
To James A. Bailey, painting etc., Adj't Genl's office	28.00

To Dewey Trimble & Co., furniture Sec'y of State's Office	105.00
To James A. Bailey, painting Treasurer's and Sup't Public Instruction Office	53.47
To L. B. Wilkinson, painting Sup't Public Instruction Office	68.75
To D. J. Silver & Son, setting vault fronts Auditor's and Sec'y of State's Offices	312.00

FOR INSANE ASYLUM, UNIVERSITY AND CAPITOL.

To A. Meyer, coal for Capitol	$1,375.00
To A. Meyer & Co., coal for Asylum in 1870	1,050.00
To A. D. Marshall, coal for Capitol	218.55
To Harry Byrne, plumbing and repairs Insane Asylum	68.05
To J. F. Adams, repairs Insane Asylum	10.00

FOR TRAVELING EXPENSES, ETC.

To S. D. Beals, traveling expenses	350.00
To H. H. Brown, removing archives, Omaha to Lincoln	87.50
To James N. Tait, drayage etc.,	7.50
To John C. Creed, arrest of Samuel Pool.	100.00
To S. C. Abbot & Co., stationery Sup't Public Instruction Beals	116.65

FOR PRINTING LAWS AND JOURNALS.

To St. A. D. Balcombe, for printing Journals	$1,118.55
For printing Register Books	600.00
For tax receipts, blanks etc.	1,372.90
For printing for Superintendent Public Instruction	656.00
For printing for Penitentiary	57.00
To Hentzel & Renner, printing and translating Governor's Message	100.00
Leighton & Brown, paints, oils, wall paper, etc.,	47.80
S. C. Elliott & Co., lamp.	10.00

STATIONERY AND BOOKS FOR EXECUTIVE DEPARTMENT.

Mills & Co., books, stationery, etc.,	374.30
J. W. Middleton & Co., books, stationery etc.,	280.05
To Leighton & Brown, stationery executive department.	112.00
Paints, executive dept.,	60.52
Incidentals, exec., dept.,	57.53
Paints, oils etc., exec., dept.,	24.95
Coal oil, etc., exec., dept.,	9.10
Incidentals, exec., dept.,	63.35
To L. E. Cropsey, 54 days work in exec., dept.,	162.00
To R. P. Beecher, 238 days work in exec., dept.,	714.00

CLERK HIRE ADJUTANT GENERAL'S DEPARTMENT.

J. D. Parker, 8 months service as clerk at $75	600.00
T. F. Hardenburgh, 5 days service	15.00
J. J. Roggen, 5 days service	15.00
E. P. Roggen, 5 days work	14.99
G. W. Whitehead, 2 days work	6.00
Bohannan Bros., transporting cannon, small arms, and ammunition,—Omaha to Lincoln,	75.00
L. B. French, expenses on trip after Insane	30.00
Andrew Keene, repairing chair	5.00
M. Langdon, 2 cords of wood for library.	19.00
John Robison, attending out-house 60 days	180.00
Expense of Railroad Committee	710.60

Expense of Joint Investigating Committee	790.55
Vault Safe, doors etc., for State Treasurer's dept.,	6,000.00
W. H. H. Waters, Daily Chronicle 40 days	47.25
Samuel Wilcox, Lightning rods and points for Insane Asylum	417.50
For assistant clerk hire, Committee on Engrossed and Enrolled Bills	250.00
For Land Office fees entering agricultural lands	2,500.00
Wilson & Sterne, balance due	8.69
Arrison & Co., furniture etc.,	259.00
Pearman & Co., trees etc.,	1,000.00
E. Fuller for guarding state prisoners at Fremont, Neb., from April 1st., 69 to December 1st., 69 244 days and nights	732.00

For the payment of the officers and employees of the House of Representatives for extra services.

F. M. McDonagh, Chief clk., 40 days services	160.00
L. E. Cropsey, assist., clk., 40 days services	160.00
J. R. Webster, 2nd asst., clerk 40 days services	160.00
C. Culbertson, Sergt., at Arms 40 days services	120.00
D. S. Snyder, Engrossing clerk 40 days services	120.00
Cornelia Frost, Enrolling clerk 40 days services	120.00
S. J. Alexander, Asst., Sargeant at Arms 40 days service	120.00
E. L. Clark, Door keeper, 40 days services	120.00
E. Goodsell, Fireman 40 days service	120.00
Rev. Fifield, Chaplain, 40 days services	120.00
F. M. Donavan, Page, 40 days services	60.00
H. Baird, Page 40 days services	60.00
G. W. Collins, Speaker, days services	120.00

For the payment of the officers and employees of the Senate.

C. H. Walker, Secretary of of the Senate 40 days services	160.00
C. M. Blaker, Asst., Secretary of the Senate 40 days services	160.00
A. M. Blaker, Enrolling Clerk 10 days services	30.00
Extra services sundry persons Enrolling	10.00
C. E. Hine, Doorkeeper 40 days services	120.00
Andrew Keene, Fireman, 40 days services	120.00
S. M. Kline, Sargeant at Arms 40 days services	120.00
J. D. Parker, Asst., Sargeant at Arms 40 days services	120.00
Rev. Goodale, Chaplain 40 days services	120.00
J. F. Hodges, Page, 40 days services	120.00
E. E. Cunningham, President Senate 40 days services	120.00
Secretary of the Senate, for copying Journal of the Senate and Impeachment Trial	200.00
Asst., Secretary of the Senate for copying Journal of House and Impeachment Trial	200.00
For copying Journal of the house	200.00

Provided that the above persons shall receive pay only for the services actually rendered upon a certificate signed by the President of the Senate and Speaker of the House.

Section 2. The State Auditor is hereby authorized upon evidence being presented that the parties for whom appropriations are made by this Act, performed the labor contemplated for the sums appropriated have been justly expended, shall draw his warrant upon the Treasurer for the amount which warrant shall give the name of the person and the service and material furnished for which the warrant was given.

Sec. 3.This Act shall take effect and be in force from and after its passage.

G. W. COLLINS.
Speaker of the House of Representatives.

E. E. CUNNINGHAM,
President of the Senate.

Approved March 28th, A. D. 1871.
WILLIAM H. JAMES,
Acting Governor.

I hereby certify that this Bill originated in and passed the House of Representatives.

L. E. CROPSEY,
Asst., Clerk.

Mr. WOOLWORTH. Mr. President, I would suggest that they be printed, then we can look them over more carefully.

Mr. McCANN. Mr. President, I think our cost of printing is running up very rapidly indeed, and I would suggest to the Convention that the appropriation bills are before the Convention now; they are submitted by the Auditor; and as they can be seen and examined now and at any time in the office of the Secretary of State or Auditor, I object to the printing of 1000 copies of the bill. We are running up bills for printing that will astonish this Convention when they see them; and we will want an appropriation of another $15,000 to cover this one item alone. I carefully examined those bills yesterday. They are now upon the Secretary's desk; every member can see them; and I hope we will not incur the printing of these copies. I would add that the State printing is now being done, and the laws will soon be before us, and we can examine them at any moment.

Mr. WOOLWORTH. Will the gentleman allow me to inquire what the object is in calling for the copies of these two acts?

The PRESIDENT. The resolution called for a detailed statement of the expenditure, and he gave the Act of the Legislature, appropriating different amounts.

Mr. WOOLWORTH. Then Mr. President, I move that the communication be referred to the Committee on Revenue and Finance, that they may examine them and state, in a brief story, the contents of these two bills, and tell us better than by a personal examination by us, of the bill, at length.

The PRESIDENT. The question is upon the motion to commit.

Motion agreed to.

Correction of the Journal.

Mr. CAMPBELL. Mr. President, I move that the Journal be so corrected as to show that the bill which the Committee of the Whole had under consideration yesterday was read a first and second time, and then referred.

Mr. ESTABROOK. Do I understand that that fact wants to be shown?

The correction suggested was ordered made.

Extension of Privilege.

Mr. HASCALL. If there is no objection I want to make a motion.

Leave granted.

Mr. HASCALL. I move that the rules be suspended and the privilege of the floor be granted to Col. P. T. Abell, of Atchison, Kansas.

Mr. CAMPBELL. I would also include with him Mr. A. Byram, of the same place.

Mr. STEWART. And I would include Major J. Loree, of Richardson County, Nebraska.

Motion agreed to.

Reports of Committees.

Mr. ESTABROOK. Mr. President, the Committee on Education, School Funds and Lands, held a session this morning and instructed me to report, although the report is somewhat marred with interlineations and the like. I will state, moreover, it would have preferred to submit a somewhat more elaborate report, as to the amount of school funds, and other matters of interest connected with the educational department of our State. That we defer until another time. I simply present this, and ask that the rules be suspended, that it be read a first time, and second time by its title and printed; and referred to the Committee of the Whole.

Mr. McCANN. Mr. President, I understand there is some misapprehension in reference to the tabular statement which was ordered printed, and as this contains a history of the expenses since the organization of the state, it is suggested that a larger number be printed while the form is up. I move that 300 additional copies be printed.

Motion agreed to.

The Secretary commenced to read the report of the Committee on Education, School Funds and Lands, when he was interrupted.

Mr. ROBINSON. Mr. President, This is out of order. I move to suspend the rules and that the bill be read a first and second time by its title as we do not hear or understand it as read by the clerk.

Motion agreed to, and rules suspended.

The bill was read first and second time by its title.

The PRESIDENT. The question now is that it be printed and referred to the Committee of the Whole.

Motion agreed to.

Mr. CASSELL. Mr. President, I have a report from the Committee on State Institutions and Public Buildings.

Mr. STEWART. I move that the rules be suspended and the article read a first and second time by its title and printed.

Mr. KIRKPATRICK. Mr. President. I object.

Mr. PARKER. Mr. President, I desire to hear it read a first time.

Mr. STEWART. I withdraw my motion to suspend the rules.

The PRESIDENT. First reading of the article.

Mr. STEWART. Mr. President, I move that the rules be suspended; the article read a second time by its title and 100 copies ordered printed, and then be referred to the Committee of the Whole.

Mr. HASCALL. Mr. President, the motion to refer to Committee of the Whole, is out of order. We have a rule which carries it to the Committee of the Whole without a motion.

The PRESIDENT. The gentleman from Douglas (Mr. Hascall) is right. The question, gentlemen, is upon the printing of 100 copies of the report.

Motion agreed to.

Mr. ESTABROOK. Mr. Chairman, It is suggested to me that it should be 200 copies, as the additional 100 copies will cost simply the price of the paper and the work of printing, which will take perhaps an hour. I move that 200 copies of all Articles be printed in the bill form.

The PRESIDENT. Gentlemen, the question is upon the motion as just stated by the gentleman from Douglas (Mr. Estabrook).

Motion agreed to.

Reports of Committees.

Mr. BALLARD. Mr. President, I submit the report of the Committee on Future Amendments.

The Secretary reads the report as follows:

Report of the Committee on Amendments.

M. BALLARD,
Chairman.

Mr President:

Your Committee on Future Amendments beg leave to present the following, and would respectfully recommend that the same be adopted by the Convention:

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each house, such proposed amendment or amendments shall be entered upon the Journals, with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published three months before the next election in at least one newspaper in every county in which a newspaper shall be published, and if in the Legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the Secretary of State shall cause the same again to be published in manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner and at such time, (at least three months after being so agreed to by the two houses), as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this State voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years; provided, that if more than one amendment be submitted they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

Sec. 2. Upon the expiration of twenty-five years from the adoption of this Constitution, or any year thereafter, the Legislature may provide by law for the submission of the question: "Shall there be a Convention to revise or amend the Constitution?" and should a majority of the legally qualified electors voting thereon decide in favor of calling a convention for such purpose, then the Legislature at its next meeting shall provide by law for the election, qualification and pay of the delegates to such Convention.

We, the undersigned would respectfully represent that we cannot concur with the majority of the Committee as to the second section herein reported, for the reason that we believe that the first section contains all that is necessary on the subject of future amendments.

M. BALLARD,
JOHN C. MYERS.

The PRESIDENT. First reading of the Article.

Mr. HINMAN. Mr. President, I ask that the second section be read again.

The Secretary read the Second Section, again.

The Article is read the second time by title.

The PRESIDENT. Gentlemen: The question is upon the printing of 100 copies of the report.

Motion agreed to.

Mr. PHILPOTT. Mr. President, I would like to know whether there is any provision for printing the report of the Committee on Public Institutions and Buildings.

The PRESIDENT. 100 copies were ordered printed.

Resolutions.

Mr. PHILPOTT. Mr. President, I wish to offer a resolution.

The Secretary read the resolution, as follows:

RESOLVED. That the Hon. Secretary of State be requested to report to this Convention the cost of the printing done for the same up to the present day.

Mr. PHILPOTT. I think it is eminently proper, Mr. President, that this information be given us.

Mr. REYNOLDS. Mr. President. I am informed that the information sought is not in the possession of the Secretary of State, but of the State Auditor.

Mr. PHILPOTT. Then, Mr. President, I amend my resolution by inserting "State Auditor" instead of "Sec. of State."

The resolution as amended was adopted.

Mr. TOWLE. Mr. President, I offer a resolution.

The Secretary read the resolution, as follows:

RESOLVED. That the Committee on Rights of Suffrage be requested to inquire into and report upon the expediency of incorporating limitations on the following points, relative to the registry of voters, in the new Constitution:

1st. Whether the best interests of the State require a registration of voters.

2nd. Whether it would not be best to require registration only in cities of the 1st class.

3d. Whether the best interests of the State, and those entitled to exercise the right of suffrage do not imperatively demand that in case a registry law should be passed, or continued in force, that the Registrar of each Precinct should be compelled to place upon the registry list every legal voter of his precinct, even though no application shall be made for registration, by persons so entitled.

4th. Whether the said Registrar should not be elected by the legal voters of each precinct.

Mr. TOWLE. I move that the resolution be referred to the Committee on Rights of Suffrage.

The motion was agreed to.

Mr. WEAVER. Mr. President, I have a resolution.

The Secretary read the resolution, as follows:

WHEREAS: In several States there have been repeated attacks made against the public school system by attempting to divert school money to the use of different religious sects; therefore be it,

RESOLVED: That there should be engrafted into our Constitution a clause prohibiting, forever, a division of school funds among different denominations.

Mr. WEAVER. Mr. President, I ask that the resolution be referred to Committee No. 6, on Education, School Funds and Lands.

So referred NEM. CON.

Mr. HASCALL. Mr. President, I

hope we shall be able to pass this order soon, so that we may get into Committee of the Whole on the Executive Article.

The PRESIDENT. I will inform the gentleman from Douglas (Mr. Hascall,) that there is no order to pass to from this order.

Mr. BOYD. Mr. President, I have a resolution I wish to offer.

The Secretary read the resolution as follows:

RESOLVED: That the Acting Governor of this State be and is hereby requested to report at once the information asked for in the resolution of Mr. Scofield, adopted by this Convention on the 21st inst, relative to the public lands and other school lands.

Mr. BOYD. I move the adoption of the resolution.

The motion was agreed to.

Mr. HASCALL. Mr. President, I move that we now take up the special order of the day, and go into Committee of the Whole on the Executive Article.

Mr. PHILPOTT. Mr. President, if the gentleman will just wait a moment, I have a resolution I wish to offer.

Mr. HASCALL. I will waive my motion to give the gentleman an opportunity to offer his resolution.

The Secretary read the resolution, as follows:

RESOLVED: That the Secretary of State report to this Convention any information that he may have of the cost of printing, for the same, to the present date.

Mr. PHILPOTT. Mr. President, I move the passage of the resolution.

I wish to make a remark Mr. President. The resolution which has been adopted is addressed to the Auditor, and I have thought since the adoption of that resolution that the Auditor may not have any bills yet sent in to him, and I desire to find out by somebody what this cost is, for I think we ought to know, as a Convention, if we are to control this matter.

Mr. KIRKPATRICK. Mr. President, the expense of printing is not yet ascertained, and I think it cannot be at this time. The gentleman will see that we are having printing done every day and hour continually. We have had one order adopted this morning to the Auditor of State about this matter and I should think that was enough.

Mr. PARKER. Mr. President, this looks to me like a very simple thing to get at. The Secretary of State may request the persons doing the printing to make out an account up to the present time, and report the amount to the Convention. The other resolution to the Auditor does not reach this.

Mr. KIRKPATRICK. Mr. President, there is another thought. We have a Comittee on printing that this report should come through.

Mr. TOWLE. Mr. President, ever since the first hour after the meeting of this Convention, we have had resolution after resolution on printing, all coming from one source, from one delegation, and for one object. This matter has been discussed in the Convention and in Committee, and I had hoped that a quietus had been placed upon it forever. Now we have as was suggested by the gentleman from Cass (Mr. Kirkpatrick) a Committee on printing, and it is within the particular province and duty of that Committee to control this matter, and I have confidence in their ability to do so; and if we wish to ascertain this cost we can require that Committee to make up a report. Now then Mr. President in order that we may be troubled no more, I will move that the two resolutions be referred to the Committee on Printing.

The PRESIDENT. The first resolution has been adopted, so the motion to refer can only apply to the last resolution.

Mr. HASCALL. Mr. President. Inasmuch as this is the day for the bids on printing to be received, I think it is proper that we should have the information asked for by this resolution before the Convention.

Mr. PHILPOTT. Mr. President, I think these two resolutions are proper. They have not come from any particular delegation, but they have come from a particular individual. I assume the whole responsibility myself for I have not consulted with any of the gentlemen from Lancaster about this matter, and as much as it has been decided that this Convention has the whole control of this printing matter I think it is eminently proper that this Convention should be informed as to the cost. I believe that I have not feared at any time to bring this matter before this Convention, and I claim the right of this Convention to ask from officers of the State any information that will give light on this matter. I think that the gentleman from Richardson (Mr. Towle) did me an injustice in his remarks. I wish to say it is for a particular object that I introduced this resolution, and that object is to take care of the money. I think this resolution should prevail. If necessary, let it go to the Committee on Printing, but if that Committee fails to furnish the needed information, let the Convention order it.

Mr. ROBINSON. Mr. President, this resolution calls for information from the Secretary of State, and I do not think it is proper for it to go to the Committee on Printing and lie there. It does not refer to the future printing, but only to the printing that has already been done.

Mr. TOWLE. Mr. President, as I understand it, we have certain Committees for each special purpose. If I remember right a few days ago a resolution was adopted directing the Committee on Printing to advertise for five days for bids on printing for the Convention, and I think this whole thing is in the hands of that Committee; and when that Committee asks or demands a statement as to certain figures, then I shall be in favor of the resolution of the gentleman from Lancaster (Mr. Philpott). Why not ask that Committee to report to this Convention the expenses of printing for this Convention up to the present time, if that information is needed?

Mr. GRAY. Mr. President, As I intimated to the Convention this morning the expenses of the printing of this Convention are becoming very large indeed. I have as much regard for the rights and duties of the Committee on printing as any member of this Convention, but I take it sir, as this is the day bids are to be received and awards made, it is proper that we should know what has been the cost of the printing up to, and including this day. I take it, sir, that to refer this to the Committee on Printing would give us no information whatever. That Committee has no doubt attended to its duty, but it is no part of the duty of that Committee to inform the Convention what the cost of that printing has been, or may be. Bills for this printing will not be handed the Committee on Printing, but they will be presented to the Auditor to be certified and then the Treasurer for payment. We wish to know what that cost has been up to this time, and including this day. I hope that information may be obtained and placed in the posession of the Convention.

The motion of the gentleman from Richardson (Mr. Towle) was lost.

The resolution was agreed to.

The PRESIDENT. The question now recurs on the motion of the gentleman from Douglas (Mr. Hascall) to go into Committee of the Whole.

The motion was agreed to. So at eleven o'clock the Convention went into Committee of the Whole with Mr. Myers in the Chair.

The CHAIRMAN. The Secretary will read section 6 of the Article on Executive.

The Secretary read the section as follows:

GOVERNOR.

¶ 6. The supreme executive power shall be vested in the governor, who shall take care that the laws be faithfully executed.

Mr. WOOLWORTH. Mr. Chairman, I move the adoption of the section.

The motion was agreed to.

The CHAIRMAN. The Secretary will please read Article 7.

The Secretary read the section as follows:

¶ 7. The governor shall, at the commencement of each session, and at the close of his term of office, give to the general assembly information, by message, of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall account to the general assembly, and accompany his message with a statement of all monies received and paid out by him from any funds subject to his order, with vouchers, and at the commencement of each regular sesion, present estimates of the amount of money required to be raised by taxation for all purposes.

Mr. SPRAGUE. Mr. Chairman, I move to amend by striking out the words "general assembly" and insert the word "Legislature."

The motion was agreed to.

Mr. ESTABROOK. I move to insert after "term of office", the following "and whenever the Legislature may require."

The amendment was agreed to.

Mr. WOOLWORTH. Mr. Chairman, I move the adoption of this section as amended.

The motion was agreed to.

The CHAIRMAN. The Secretary will read section 8.

The Secretary read the section as follows:

¶ 8. The governor may, on extraordinary occasions, convene the general assembly, by proclamation, stating therein the purposes for which they are convened; and the general assembly shall enter upon no business except that for which they were called together.

Mr. ESTABROOK. Mr. Chairman, I move to insert, after the word "convened" in the fourth line, the following, "and no business, except that for which they were called together, shall have any validity or be enforced". I will state that this matter has been a stumbling block in the Constitution of other States, but the question of what shall be affected by the passage of the law not named in the proclamation calling the Legislature together has never been fully settled; and it is a matter of some difficulty to determine. I do not care how it is provided. It may be changed so that we understand distinctly what are the powers of the Legislature, and it will be satisfactory to me. Now our attention here has been several times called to this difficulty. I know it was claimed that very many things done by the Legislature in these extra sessions had not the validity of law because not mentioned in the proclamation. If they may go on and enact any law they please as well in the proclamation as those not named at all, then say so, so that there will be no more question about it in the courts. I believe it was the intention originally to absolutely prohibit any action at the hands of the Legislature not indicated by the proclamation that called them together, and this amendment intends to so express the idea, that is the intention—that we express it in plain and proper language.

Mr. WOOLWORTH. Mr. Chairman, I do not like the change which it is proposed to make in the section. I prefer the language which has been proved by constant usage and which is incorporated in the section. Nor do I think the criticism passed upon the language by the gentleman from Douglas (Mr. Estabrook) is justified. As it stands the language is a great deal more sweeping than the language which it is proposed to insert in its stead. I prefer that the Constitution shall prohibit the Legislature from entering upon the consideration of any business but such as is named in the proclamation calling them together, so that when the proposition shall come up in the Legislature upon any subject not so named, it shall be met right at the threshold of the discussion with a prohibition. That is the effect of the language as it stands. The language which it is proposed to use instead will permit the Legislature to go on and consider; to enter upon the consideration of other business, and only deny validity to the business when it shall have been transacted. Now that I do not like. Does the language proposed affect anything more than the language used? I think not. When you say to a man, by an authoritative provision of law, "you shall not enter upon a certain course of conduct," do you not certainly provide that if, in spite of the law, he shall enter upon that business, that course of conduct, it shall still be illegal, and what he does shall be void? That is most certainly so. For instance, supposing you have a bill of statute saying that a certain contract shall not be made; and in violation of that statute a party shall go on and undertake to contract, and the question of the validity of the contract shall come before the court, what does that court instantly say? It is a void contract and cannot be enforced, although the provision of the law should simply be that the parties should enter upon the work of making any such contract. And just so here. You say that the Legislature shall not enter upon any other business than that named in the proclamation, and by doing so you effectually, and in the most positive terms, render nugatory any business, other than that named which they undertake. Then you have, in addition, the prohibition meeting the Legislature at the very threshold saying, "you shall not enter upon any other business." The language, as it stands, is broader than the language proposed. I like it better.

Mr. ROBINSON. Mr. Chairman, I hope the amendment of the gentleman from Douglas (Mr. Estabrook) will not prevail, the object of it, as far as I see is simply this—the learned gentleman says the courts have not passed upon the validity of any law passed in defiance of any such provisions. I take it as true, I know of none such, and am very sure none will ever rise. It is well known that a Constitutional provision of this kind acts as an indication of the powers of the Legislature; and if the Constitution provides that no business of a certain character shall be transacted, it means what it says; and if business is transacted, it is treated as no business whatever. It strikes me that any amendment to this section will only get it into a bungle. It says precisely what it means. It exercises a strict limitation over the Legislature, and there will be no doubt, if a case should arise, it would soon be settled. I think the language is precise and onght to stand.

Mr. ESTABROOK. I do not materially differ, sir, with my colleague (Mr. Woolworth) and the gentleman from Lancaster (Mr. Robinson) as to what would be the legal import. Perhaps the court would decide in that way, and perhaps not. We have, the gentlemen will remember, limitations upon the powers of the Legislature in another clause, which declares that no bill should embrace but one subject, which shall be indicated by name, specifically. It is very specific that it shall be accurately named in the title. If you pass an act embracing two subjects, one of which only is embraced in the title, that act would be void. When I look at the reports upon the subject I find they are very conflicting. In Ohio, where the clause was first inserted in the Constitution, in the sixth volume of Ohio reports, it is simply directory, and does not affect the validity of the law at all.

Now, then, this is similar in its character, it is true. It goes on to state no business shall be entered upon except that named in the proposition, and the lawyer perhaps might understand that whatever business they did transact, not named in the proclamation, should have no invalidity. But it so happens that many have been in this Legislature who were not lawyers, and it might not receive that construction. I know that in this State the pages of the statute books are covered with bills, laws and proceedings passed at this called session. I know the one refering to the whitewashing Committee was, and yet it was relied on as a positive vindication of the Board of Commissioners for doing what they did, and it was said the State was bound by it. There are various laws in violation of this rule, and it never has passed under review of the Supreme Court that I know of. But on the other point it was settled in the sixth Ohio. These laws should have validity, and in order to sift the question. Therefore I ask, for God's sake, give us peace on the subject, and let us know how it shall be settled. If you mean to say it is inviolate, I am willing to let this stand as it is at the end. Let the gentleman use his own strong language if you please; but let this thing be fixed. There is no State which has suffered, or is liable to suffer so much as we from this kind of thing. I only propose to have it fixed and inserted so that not only astute lawyers may understand what it means, but that members of the Legislature, coming from whatever place or capacity they may, understand what is their duty in regard to this, distinctly.

The CHAIRMAN. The question is on the amendment of the gentleman from Douglas.

The amendment was lost.

Mr. ESTABROOK. Mr. Chairman, I have another amendment, as follows: "in case of or danger from the prevalence of disease at the seat of government, he may convene the Legislature at any other suitable place in the State."

The amendment was agreed to.

Mr. SPRAGUE. In order to make this section conform with those we have already adopted, I move to strike out the words "general assembly," and insert "Legislature."

Motion agreed to and the section adopted as amended.

The Secretary read section nine, as follows :

¶ 9. In case of a disagreement between the two Houses with respect to the time of adjournment. the governor may, on the same being certified to him by the House first moving the adjournment, adjourn the general assembly to such time as he thinks proper, not beyond the first day of the next general session.

Mr. HASCALL. Mr. Chairman, I have an amendment I wish to offer, I move to add the words: "but no general session of the Legislature shall be so adjourned by the Governor until forty days after the commencement of the session." Mr. Chairman, I will say that the reason I introduce this is to cover an evil that might arise. For instance, if by scheming, the Governor should get one branch of the Legislature to concur with his own feelings, and if he should desire to get rid of the Legislature all that would be required would be to get that branch to pass a resolution on adjournment; and if the other house should fail to pass the same there would be a disagreement as to the time of adjournment that would authorize the Governor to prorogue the Legislature.

Mr. ROBINSON. Mr. Chairman, I do not understand the section as the gentleman from Douglas does. This is only in cases of disagreement. If both houses adjourn, and they cannot agree, it is proper the Governor should have the power to say as to when they shall adjourn, and until such time he shall see fit, not beyond the first day of the next general session.

Mr. KIRKPATRICK. Mr. Chairman, I have thought that this might, perhaps, be used against the interests of the State. I have always doubted whether it was democratic to give such power to the Executive of the State. Just prior to the adoption of the present Constitution of the State of Nebraska, I had occasion to canvass the Constitution, on this particular provision, which is similar to the one in the present Constitution on the same subject. I undertook to show that a dangerous use might, perhaps, be made of this commission. I would state I was opposed to the adoption of the present Constitution at the time; and was willing to make use of any honest argument for the purpose of its defeat.

We find that the Governor could slip in and by the exercises of the prerogative contained in this section adjourn the Legislature to a time not beyond the day set for the convening of the next Legislature. I do not know that I can call to mind but one instance when this power of adjourning the Legislature was exercised by the Governor. This was in Illinois, during the late war, Governor Yates, of that state dissolved the Legislature, and we were all glad at that time, that he had the power.

Mr. LAKE. Mr. Chairman, I agree entirely with the gentleman from Lancaster (Mr. Robinson) there could be no disagreement, such as is contemplated here, except with respect to the time. Suppose a concurrent resolution be introduced in one House to adjourn—suppose, for instance, the Senate passes this resolution, and it goes to the House, and the House takes no action upon it but lets it lie upon the table, and refuses to act upon it, there is no disagreement up to that time when the Legislature should be adjourned. There can be none, and it seems to be contemplated by the section that there must be a disagreement with respect to the time. If, for instance, one House move an adjournment to a certain time, and the other House adjourns to another certain time, and they cannot agree upon the time for this adjournment, then, under the section, the house moving shall report that disagreement to the Governor; then the Governor may adjourn the Legislature, but not beyond the day set for the next regular session. I am in favor of this section remaining just as it has been reported by the Committee, I think it is right. I think if there is a disagreement as to the time when the Legislature should adjourn that there should be a power vested somewhere to adjourn that body, and I know no better place than the Executive. If but one house has fixed a time to adjourn, then there can be no disagreement.

Mr. HASCALL. Mr. Chairman, the gentleman's position is untenable for this reason; it is not the usual way to adjourn the Legislature, for a motion to be made in one body to adjourn to one time, and in the other body to adjourn to another time. It is done by concurrent resolution passed by one body and sent to the other. They usually have a standing rule that concurrent resolutions shall come up in their regular order, so that the resolution is reached if there is only one, two, three, or four, members in favor of its passage. Secondly, when it comes up in its order, and they refuse to pass that concurrent resolution to adjourn, that is a disagreement as to the time for adjournment. I say there is a disagreement as to the time, because one body desires to adjourn to a certain time, and the other is unwilling to pass a resolution fixing the time of adjournment. This concurrent resolution relates to a permanent adjournment, and not for a few days: because as our Constitution stands now, one branch of the Legislature may adjourn for a week, or ten days without the concurrence of the other branch. A permanent adjournment is effected in this way; the time is fixed at twelve o'clock of a certain day, and when that time arrives, the session terminates. This forty day clause was only for the purpose of prohibiting members from receiving pay for a greater length of time, but their acts were valid. They might remain in session as long as they pleased, but they receive no pay for extra time. I say that the amendment proposed here is the only safe one for us to adopt; that is that at a general session of the Legislature, the Legislature shall remain in session at least forty days, unless by agreement of both houses, they remain in session a longer time; and that the Governor shall not have the power to adjourn the Legislature in less than this length of time. I think it was a valid objection to the Constitution raised by the gentleman from Cass (Mr. Kirkpatrick).

Mr. LAKE. Mr. President, I think the position taken by my colleague (Mr. Hascall) is untenable. The proposition, as he laid it down, that only one house can move to adjourn—

Mr. HASCALL. Mr. Chairman, I wish to correct the gentleman, I intended to say—

The CHAIRMAN. The gentleman from Douglas (Mr. Hascall) must not interrupt the speaker.

Mr. LAKE. I cannot say what the gentleman intended to state, I am only repeating what he did state—that but one resolution could be introduced, and that that was the usual way. I say, Mr. Chairman, it is usual for a resolution to adjourn to be introduced in either branch of the Legislature. It is not an uncommon thing for the joint resolution to be introduced in the Senate, and sent to the House, and that one body will fix one time, and the other another. When this is the case and the two branches cannot agree upon the time for adjournment, I think it is highly proper there should be a power vested somewhere to settle between them. Another point, the gentleman made; I understand him to say that it is usual for one House to adjourn for a certain number of days without the consent of the other. Now it is not intended by this Section to abridge that right at all. That will be provided for in the article on "Legislative." This is simply providing for the powers which the Executive shall exercise in a certain contingency. It did not intend to provide that neither House of the Legislature shall not adjourn without a concurrence from the other House. This section is not intended, at all, as a limit upon any right of the Legislature; it is only when the two Houses shall disagree as to when the Legislature shall adjourn, and not as to when either shall adjourn.

Mr. HASCALL. Mr. Chairman I protest against the gentleman changing a thing which I said in reference to a temporary adjournment, to a permanent. I attempted to show him that adjournments were made by a concurrent resolution, and that may be introduced in either House of the Legislature, or the same resolution may be introduced in both houses at the same time. I do not believe the gentleman is so dull that he cannot understand, but he has not been in the Legislature for some time perhaps, and he spoke without due consideration. It is necessary to have this added to this section in order that this extraordinary power may not be used to the detriment of the State.

Mr. SPRAGUE. Mr. Chairman, Being opposed to this amendment I wish to illustrate my position. Now, sir, we will suppose that the Legislature meets, and in the first five days performs all the business before them and there is one question only between them, and that is a disagreement about the time to which they shall adjourn. Now, if the gentleman's amendment is passed they are to be kept here forty days before the Governor can have the authority to adjourn them. It strikes me that in such a case there should be some power to decide that question, and I think the Committee has placed the power here in the proper person; hence I am not in favor of the amendment.

Mr. KIRKPATRICK. Mr. Chairman: This question resolves itself first into this—Whether the Legislature shall have the power to adjourn, or whether it shall be exercised by the Executive. The gentleman seems to think that unless the Governor has the power to adjourn the Legislature, that they will have to remain here for forty days. Now, sir, I for one am not willing to trust this power to adjourn in the hands of our representatives. If it is put into the hands of the Governor it may be used against the interests of the State.

If the gentlemen will read the Congressional Globe they will find where the House of Representatives have been held together by the Senate and had to adjourn from day to day without a quorum, the Senate imagining that they had important business. By examination I found that the President had power and should have adjourned the Congress. I am satisfied to leave this power regarding the setting and adjournments of the Legislature to the Legislature themselves and I am willing to fix a Constitutional limit and then leave it to them.

Mr. TOWLE. Mr. Chairman: The amendment made by the gentleman from Douglas (Mr. Hascall) if I understand it right, is this, that although the two houses of the Legislature disagree as to the time of adjournment, yet the Governor cannot prorogue the Legislature until they have sat for forty days. It is probable, or quite certain, that we shall have a session of the Legislature each year hereafter, and there may be instances when the business might be done in ten days, or even in two or three days; and then, if a disagreement is gotten up, they must remain here until the end of the forty days before the Governor can exercise the proroguing power.

For that reason, I am opposed to the amendment. And then again, the gentleman says the Governor might induce one of these houses to disagree to any time of adjournment, so that he may adjourn the Legislature and gain his own interests. If he has the power to do that he has the power to break down any law before it becomes valid.

Mr. ESTABROOK. Mr. Chairman, we see in this question what we have seen in others and suggested that instead of employing some apt words we have followed precedents. Let me refer to things which are occuring in our own history as a State. The probability is that in many old states this question has not, and never will be raised. But it seems to me that this State is making history and with our rapid progress many things may happen that never will occur in an older state. It seems strange to me that this young State, a real Young America, should be bound to follow the precedents of the old states in the frame of our Constitution. Let us examine and discover the reasons they have had in the use of those words and then employ apt words, so that plain men, as well as men of letters, may understand the duties which they are expected to perform.

I wish the committee that reported this article would employ such apt words, so that there could be no doubt as to what they meant. I will state that I understand that this question cannot arise when one body says it wishes to adjourn and the the other do not want to adjourn at all. It is only when both houses wish to adjourn that this exigency can arise. I believe it to be my duty and I propose to vote to devise a Constitution for Nebraska, and not adopt the Constitution of Illinois, or any other state. I have a little spirit, if I have seen many years, of the Young America in me.

During the late impeachment trial there was one branch of this Legislature, the one that occupied the room where we sit to-day, that wanted to adjourn but the other branch did not want to adjourn and consequently they were kept here with nothing to do until it was a notorious fact that there was not a quorum in the house and they did not dare to call the house. Under this state of facts how could this body pass a concurrent resolution? It could not be done with less than a quorum and if so, the body would be perpetuated forever if there was no proroguing power. I hope this thing will be perfected all the way through. I do not exactly approve of all this. It has some method in it. I would say 20 days. When that body refuses to agree in regard to time we must believe there is some ground for it and when this thing has been vibrating between two bodies, and they fail to agree then leave the power to the Executive to settle. The idea that if at the expiration of five days, both parties agreed they had performed their duties that it would require Executive interference is absurd. The only question is when they will adjourn if they have got through their business. I shall vote for this as it is, because it is better as it now stands, and if you shorten to twenty days I would still prefer it.

Mr. HASCALL. I accept the amendment of 20 days instead of 40.

Mr. WOOLWORTH. Mr. Chairman, I desire to make one remark, I am very sorry to be obliged again to differ with my friend from Douglas (Mr. Estabrook) with respect to this language and with respect to the other language used in this Article. Now, sir, language is used for the purpose of conveying ideas, and if that language is plain it is just as easily understood by what he calls a common man as by an astute lawyer. And the language used in this Article, to every man that will read it with attention, will be just as clear and perspicuous as any language that could be employed. Now, sir, I will not vote for the adoption of any language because I find it is in the Constitution of an older State, or younger State. The language I find proved by usage, extending from the numerous constitutions all along down to the present time, does commend itself to me; it commends itself to the consideration of every man; because it has had the approval of a great many other men; and the very fact of its constant usage, the very fact that it has been employed all along is the approval of that language. And this language, finding itself placed first, perhaps, in the Federal Constitution, has been adopted, not only in Connecticut, where my friend, I presume, did not come from, but also in the Constitution of almost all the states in the Union. Now is there any obscurity in the language? What does it say? You would infer from the speech of the gentleman that there was obscurity here in respect to the manner in which there is a disagreement between the two houses. If there be, then correct the obscurity by all means; but is there any obscurity? No, gentlemen. It is perfectly plain. It is written here so that what he calls a plain man may understand it. Now, sir, I do not think you are to better this Article, couched in this clear and unmistakable language, by adopting some phraseology that happens to suggest itself to any gentleman attending here and considering it for the first time. I do not think you are to better this language that has met the approval of a great many other bodies like this before, by any additional or other phraseology. I think you have got here exactly the language that expressed the idea. Is the idea wrong upon that matter? While the gentleman here (Mr. Estabrook) is discussing language my colleague on the other side of the house (Mr. Hascall) is discussing a principle. Now, turning from the language and the general consideration that should govern us in adopting language to express our ideas, what is it we desire to express in this Constitution and what is it desired on the other side of this hall to express? Let us see what the phrase, with the provision as it is proposed by the Committee is. "That when the two houses shall disagree in respect to the time of adjournment," nothing else. They have agreed, and my friend upon the left (Mr. Estabrook) says that the two houses have agreed that they will adjourn, but they disagree as to the time of adjournment. Then if that be so, what my friend upon the other side (Mr. Hascall) said in his opening speech upon this subject goes for naught. There cannot be such an exigency as he supposes, where two houses are assembled and organized, one of them desires to adjourn and the other does not. They must have advanced far enough in the transaction of their business and the consideration of the subjects called together to have agreed between themselves that they will adjourn; and the difficulty is only as to the time. I say, as my friend from Douglas (Mr. Lake) says, that they have reached that time, and agreed that they must adjourn, and only disagree upon the matter of time. There should be some party, some power, outside of this, to fix that point of time, the only point upon which they disagree; and what power is more fit to exercise it than the Executive? The language here is apt to express precisely the idea which it is sought to express, and the idea is correct that upon that subject, there shall be somebody outside of the two houses who shall fix the time without waiting ten, twenty or forty days or any other specific period of time.

Mr. STEWART. I move that the Committee rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. MYERS. Mr. President. The Committee of the Whole have had under consideration the Article entitled Executive, and have instructed their Chairman to report progress and ask leave to sit again.

Mr. STEWART. I move we adjourn.

Mr. WOOLWORTH. Before adjournment is put I desire to ask leave of absence until to-morrow noon. Something has been said here from time to time in regard to my personal absence from this body. I do not think there is any gentleman in this house, who, from first to last has discharged his duty more faithfully than myself. My Committees have reported and discharged all they have to do. The reason I wish to leave is, I desire, this evening to go to school where my son is. A ceremony is to take place in which I am very deeply personally interested.

The PRESIDENT. I have never heard a word about your absence.

Mr. WAKELEY. I also ask leave of absence until to-morrow noon.

Leave was granted NEM. CON.

Mr. McCANN. Mr. President, I move that the special order for two o'clock be the consideration of the report of the Committee on Legislative.

Mr. HASCALL. I hope that motion will not prevail. We have taken up an Article and ought to finish it; this switching off from one Article to another will certainly retard our business. We have now proceeded with the Executive Article, and it is proper that we should continue and finish it. And if we give any other preference it should be the Bill of Rights, as that was the first reported.

Mr. McCANN. Then take up that report.

Mr. WOOLWORTH. I desire to say, in reference to my own absence, I have no earthly objection to the consideration of this Article during my absence. So far as I am concerned, I am not particular as to this Article or any other, I doubt whether I should make the application to be excused and only did it after it seemed to a good many gentlemen who knew of my circumstances, that that it was very proper that I should do so.

Mr. NEWSOM. I believe the motion of my colleague (Mr. McCann) was to take up the Article on Bill of Rights, in case we do not proceed with the executive. Judge Mason is away, and I am not in favor of taking up any Article when the chairman is away. He is the man who has done the work.

Mr. LAKE. I would prefer that the chairman of the Executive Committee should be present during the consideration of the remaining sections of the article. In as much as we have plenty of work to do other than that it would be just to him to defer it. I shall object to taking up and proceeding further with that article until his return. He is to return by to-morrow noon.

Mr. GRENELL. There is undoubtedly work enough to do in the various committees. I therefore move to amend the motion to adjourn to to-morrow morning at ten o'clock.

The Convention divided and the motion was agreed to.

FOURTEENTH DAY.

Thursday, June 29th, 1871.

The Convention was called to order at 10 o'clock by the President.

Prayer.

Prayer was offered by the Chaplain as follows:

Almighty, Everlasting, Holy One. Defend us now and at all times, we pray. Defend us from an evil world and evil self. All the years of our lives, may we fear the Lord our God. May we fear and love the Lord our God evermore. Amen.

Mr. SPRAGUE. Mr. President, I ask leave of absence for Mr. Parker.

Leave granted.

Reading of the Journal.

The Journal of yesterday was read and approved.

Communications and Presentation of Petitions.

Mr. PHILPOTT. Mr. President, I have a memorial from the Grand Lodge of Good Templars of this State.

The Secretary read the memorial as follows:

Memorial of the Grand Lodge of Nebraska, I. O. G. T.

To the Honorable the Constitutional Convention of the State of Nebraska, now assembled in the City of Lincoln, Nebraska.

WHEREAS: the use of intoxicating liquors as a beverage can be of no possible benefit to mankind, and has already inflicted untold misery, degredation and crime, thereon: and:

WHEREAS: The sale of said liquors as a beverage is detrimental to the efficient civil government of the state of Nebraska; and

WHEREAS: The prohibition of the sale of said liquors as a beverage is a measure of true political economy: and

WHEREAS: A large portion of the citizens of the state of Nebraska, desire to have the sale of said liquors prohibited in their respective portions of said state, now therefore, we the Grand Lodge of Nebraska, I. O. G. T., most earnestly petition your Honorable body to incorporate in the new Constitution of the State of Nebraska, a provision providing that a majority of the legal voters in each county, shall have the power by vote, within their respective counties, to restrict and prohibit the sale of intoxicating liquors as a beverage.

And we in duty bound will ever pray, etc.

Mr. PHILPOTT. Mr. President, I move that the memorial be referred to a special committee of five.

Mr. MANDERSON. Mr. President, I move to amend by referring it to the Miscellaneous Committee.

The amendment was lost.

Mr. VIFQUAIN. Mr. President, I move to amend by referring to the Committee on Military Affairs.

Mr. MASON. Mr. President, I hope this communication, coming from a very respectable class of citizens, will be treated with that courtesy it deserves. The gentleman presenting this memorial, which doubtless represents, to a considerable extent, the temperance element of this State, moves that the communication be referred to a special committee. There are facts stated in this communication which, upon investigation, can be proved. While it may not meet my own views to incorporate the provisions asked for, in the Constitution, yet it seems to me it is not treating our fellow citizens—the Good Templars' organization, which has already accomplished much good, and done very much for the amelioration and betterment of the condition of our fellow men—with proper consideration. It seems to me that to refer this communication to the Committee on Military Affairs is not treating it with that respect these gentlemen have a right to receive at the hands of this Convention. And for these reasons, Mr. Chairman, the resolution urged by the gentleman presenting the memorial should receive the approbation of the Convention, and that it may be committed to the care of its friends. These gentlemen who memorialize this Convention are only exercising a natural right, an inherent right, and its exercise should be treated with the courteous respect that the servant should exercise towards its master. For these gentlemen are thus constituted, to a very considerable extent, the master element in the progress of this State. For these reasons Mr. President, I hope the motion to commit to the Committee on Military Affairs will not prevail, and that the motion for a special committee moved by the gentleman from Lancaster (Mr. Philpott) will prevail.

Mr. ESTABROOK. I am favorable to the memorial, and it seems to me we have a committee to cover the whole ground. I think the Legislative Committee is the right one.

Mr. MASON. Has that Committee reported?

The PRESIDENT. Yes.

Mr. ESTABROOK. Well, the subject matter should be in their care.

Mr. MASON. I suppose the gentleman from Lancaster (Mr. Philpott) has the special keeping of this communication, and for that reason he may have some reason for having this report from the standing committee. I think it will be better to commit to the special committee as he desires.

Mr. MANDERSON. Mr. President, I would suggest that the committee on Miscellaneous Subjects has on its list the name of the gentleman from Lancaster (Mr. Philpott.) It seems to me any one of the committees is able to consider this question, and we should not multiply committees when it is unnecessary.

Mr. ABBOTT. Mr. President, As this refers to county government, I move it be referred to the Committee on Counties. It seems to me that is the proper place for it.

The PRESIDENT. It is out of order, but I will entertain it. The question is on the motion to refer to the Military Committee.

Motion not agreed to.

Mr. MASON. Mr. President, I move to refer to the Miscellaneous Committee.

Mr. PHILPOTT. I withdraw my motion to refer to a special committee. The reason I did not move to refer to the Miscellaneous Committee is that I introduced a resolution a few days ago and it was referred to that committee; and it has had nothing done with it.

Mr. KIRKPATRICK. I hope the gentleman will not withdraw his motion for a special committee.

Mr ABBOTT. I withdraw my motion.

Mr. MANDERSON. I withdraw my motion to refer to the Miscellaneous Committee.

Mr. KIRKPATRICK. Mr. Chairman, I did not distinctly hear the resolution, or proposition or whatever it is, but I think it is a memorial from the Grand Lodge of Good Templars of the State of Nebraska, asking this Convention to make a certain provision in our proposed Constitution. I have only to say that it has been the custom in Legislative bodies to refer measures of this kind to the friends of that measure, and not to its enemies. I think it would be proper that the usual course be taken in this case.

I hope the gentleman's motion will prevail, and that this matter will be referred to a select committee.

Mr. STEVENSON. Mr. President, I believe I am Chairman of the Committee on Miscellaneous Subjects. I have not seen fit to call that Committee as yet, I thought, as the convention advanced further that there would be something more to go to that Committee. I would say, that when the Committee meets, this question of liquor traffic will receive due consideration, and if the Committee see fit, they will introduce a plank, prohibiting the sale of intoxicating liquors.

The PRESIDENT. The question is upon the motion to commit to a special committee.

Mr. PHILPOTT. Mr. President, I call for the ayes and noes.

The Secretary proceeded to call the roll.

The result was then announced—yeas 35; nays 11—as follows:

YEAS—35.

Abbott,
Ballard,
Campbell,
Cassell,
Curtis,
Gibbs,
Granger,
Grenell,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
Mason,
Myers,
Moore,
Majors,
McCann,
Neligh,
Newsom,
Philpott,
Price,
Reynolds,
Robinson,
Scofield,
Shaff,
Sprague,
Stewart,
Thummel,
Thomas,
Weaver,

NAYS—11.

Boyd,
Eaton,
Estabrook,
Ley,
Manderson,
Speice,
Stevenson,
Tisdel,
Towle,
Vifquain,
Wilson.

ABSENT OR NOT VOTING.

Maxwell,
Parchen,
Parker,
Wakeley,
Woolworth,
Mr. President,

Mr. McCANN. Mr. President, your Committee on Revenue and Finance beg leave to submit their report and ask the adoption of the accompanying resolution, and I move that the rules be suspended, the bill read a first and second time by its title, and one hundred copies ordered printed.

The PRESIDENT. The rules will be suspended if there is no objection.

The Secretary read the bill by title.

The PRESIDENT. First reading of the bill.

The Secretary again read the bill by title.

The PRESIDENT. The second reading of the bill. The rule of the House is unless some gentleman objects, that 100 copies be printed.

Mr. KIRKPATRICK. Mr. President, I would like to present a report and would like to read it myself.

The gentleman read as follows:

Report of the Committee on State, County and Municipal Indebtedness.

Mr. President:

Your Committee on State, County and Municipal Indebtedness respectfully offer the following report:

That they have under consideration the subject of proper provisions to be incorporated in the Constitution in relation thereto, and have agreed upon the following Article.

¶ 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation whatever; nor shall the State ever hereafter become a joint owner or stockholder in any company in the State, or elsewhere, formed for any purpose whatever; nor shall the State ever assume the debts of any county, city or town or other municipality, or of any private corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection or defend the State in war.

¶ 2. The State may contract debts

to supply casual deficits or failures of revenue, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether created by one or more acts of the Legislature, or at different periods of time, shall never at any one time exceed the sum of two hundred and fifty thousand dollars, and the monies arising from the creation of such debts shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

¶ 3. In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in war, or to redeem or pay the present unpaid debts of the State; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

¶ 4. After the adoption of this Constitution no county, city, town, municipality or political corporation shall ever be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate exceeding at any one time five per centum on the value of the taxable property within said county, city, town, municipality or political corporation, to be ascertained by the last assessment or taxable list of property made under the laws of the State next preceding the incurring of such indebtedness.

All of which is respectfully submitted.

S. M. KIRKPATRICK,
Chairman.

Mr. KIRKPATRICK. I move that the rules be suspended, the bill be read a first and second time by title and 100 copies ordered printed.

Mr. ESTABROOK. Mr. President, I move to amend by making it 150 copies, after talking with a printer, I find that the extra cost will not be more than $2.00.

Mr. GRAY. Mr. President, I would like to inquire of the chairman of the Committee which has just reported, whether a resolution introduced by me and substantially containing an article prohibiting donations to Railroads has been returned by that Committee.

Mr. KIRKPATRICK. Mr. President, I will state for the information of the gentleman, that there is in the possession of this Committee, several resolutions, etc., embracing and covering certain subjects, and I will state that the Committee is not ready to report upon these subjects just now, and the Committee have agreed to ask leave to make another report, and will then report back the resolution the gentleman refers to, and other matters also.

The PRESIDENT. No objection being made the Article will be read the first and second time by its title.

Mr. ESTABROOK. I move that 150 copies be ordered printed.

The motion was agreed to.

Mr. CAMPBELL. Mr. President, As Chairman of the Committee on Printing I have learned that it will only cost about 30 cents additional for each page, and therefore, I would move that there be 150 copies, of the reports of the Committees on Finance printed.

The motion was agreed to.

Mr. THUMMEL. Mr. President, your Committee on Public Accounts and Expenditures, beg leave to submit the following report. I move that it be read the first time at length, the second time by its title, and ordered printed.

The secretary read the report as follows:

Report of the Committee on Public Accounts and Expenditures.

Mr. President:

Your Committee on Public Accounts and Expenditure beg leave to report the following section, and would respectfully recommend that the same be adopted by the Convention.

GEORGE H. THUMMEL,
Chairman.

The Legislature shall not appropriate out of the State Treasury, or expend on account of the capitol grounds and construction, completion and finishing of the State house, a sum exceeding in the aggregate two millions of dollars ($2,000,000), without first submitting the proposition for an additional expenditure, to the legal voters of the state at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure.

Mr. CAMPBELL. I move that 150 copies be ordered printed.

The motion was agreed to.

Mr. CAMPBELL. Mr. President, your Committee on Printing and Binding beg leave to submit a report.

The Secretary read the report as follows:

Report of Committee on Printing and Binding.

Mr. President. The Committee on Printing to whom was referred the resolution, instructing the Committee to advertise for bids on incidental printing, would respectfully report that they have performed that duty, and have received and opened bids from the firms of Randall & Smails, Gere & Brownlee, and find that Randall & Smails bid for "Bill printing, bill form composition per 1000 "ems", 70 cents Flat cap paper per quire 30 cents Press work, per quire 8 cents, was the lowest bid for that character of printing, and the Committee entered into a contract with said firm for the incidental printing of the same.

The Committee further find, that the bids of Gere & Brownlee for all printing other than bills per 1000 ems.

Composition	.74
Per quire press work	.07
Per quire Flat Cap	.29
Per quire Flat Letter	.25
Per quire Book Paper	.60
Per 1000 ems rule and figure work	1.11

was the lowest bid for this class of work and have entered into contract with said firm for the incidental printing of the same. The Committee would respectfully submit the following resolution:

RESOLVED: That the Secretary of State be required to furnish the incidental printing under the contract made and submitted by the Committee.

Mr. CAMPBELL. Mr. President, I move the adoption of the resolution.

The motion was agreed to.

The PRESIDENT. The select Committee of five to whom was referred this memorial will consist of Messrs. Philpott, Mason, McCann, Gray and Lyon.

Mr. ESTABROOK. Mr. President, What is the order of business.

The PRESIDENT. We are under the 4th order "Reports of Standing Committees." We will now pass from that to Reports from Select Committees.

Mr. ESTABROOK. Mr. President, if there is nothing under that order, I move that the rules be suspended and that the Convention do now resolve itself into the Committee of the Whole on the report of the Committee on Bill of Rights.

The motion was agreed to.

So the Convention went into Committee of the Whole, Mr. Griggs in the Chair, on the report of the Committee on Bill of Rights.

The CHAIRMAN. The Secretary will read the report.

The Secretary commenced to read and was interrupted.

Mr. MASON. Mr. Chairman, I move that this Committee now consider this bill section by section.

Mr. ESTABROOK. Let me suggest to the gentleman that this bill has not yet been read to the Convention. It is here under the suspension of the rules and I think it ought to be read once at least, for information.

Mr. MASON. If that is the case, I will withdraw my motion.

Mr. ROBINSON. I move to dispense with the reading of the report.

Mr. NEWSOM. I rise to a point of order. The motion is to dispense with the reading. I call for the enforcement of the rule that propositions submitted to Committee of the Whole shall be first read through by the Secretary.

Mr. ESTABROOK. There can be no suspension of rule in Committee of the Whole.

The CHAIRMAN. The Chair will so decide.

The Secretary read the Article as follows:

Report of The Committee on Bill of Rights.

Mr. President:

Your Committee on "Bill of Rights" report the following preamble and article 1 of the proposed Constitution and would respectfully recommend that the same be adopted by the Convention.

O. P. MASON,
Chairman Committee Bill of Rights.

The Constitution of the State of Nebraska.

PREAMBLE.

We, the people of the State of Nebraska—grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and posterity, do ordain and establish this Constitution for the State of Nebraska.

ARTICLE 1.

BILL OF RIGHTS.

¶ 1. All men are by nature free and independent, and have certain inherent and inalienable rights--among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just power from the consent of the governed.

¶ 2. No person shall be deprived of life, liberty or property without due process of law.

¶ 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be constructed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship, nor shall any preference be given by law to any religious denomination or mode of worship.

¶ 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty, and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be sufficient defense.

¶5. The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men, may be authorized by law.

¶ 6. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched and the persons or things to be seized.

¶7. All persons shall be bailable by sufficient securities, except for treason and murder, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it.

¶8. No person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger.

¶9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offence is alleged to have been committed.

¶10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offence.

¶11. All penalties shall be proportioned to the nature of the offence; and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offence committed within the same, nor shall cruel and unusual punishment be inflicted.

¶12. No person shall be imprisoned for debt, arising out of, or founded on a contract express or implied, except in cases where there is strong presumption of fraud.

¶13. Private property shall not be taken or damaged for public use without just compensation. Such compensation when not made by the state shall be ascertained by a jury as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it was taken.

¶14. No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

¶15. The military shall be in strict subordination to the civil power.

¶16. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war except in the manner prescribed by law.

¶17. The people have a right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for a redress of grievances.

¶18. All elections shall be free and there shall be no hindrance or impediment to the right of a qualified voter to exercise his franchise.

¶19. Treason against the state shall consist only in levying war against the state, or in adhering to its enemies giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

¶20. The writ of error shall be a writ of right in all cases of felony, and in all capital cases shall operate as a supersedeas to stay the execution of the sentence of death until the further order of the supreme court in the premises.

¶21. The privilege of the debtor to enjoy necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debts or liability.

¶22. Aliens, who are, or may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens.

¶ 23. Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay.

¶24. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

¶25. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

¶26. This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people.

The CHAIRMAN. The Committee will now consider the article section by section. The Secretary will now read the first section.

Mr. KIRKPATRICK. Mr. Chairman, I move that the Secretary read the preamble.

The CHAIRMAN. Rule 39 says "it shall be read by the Secretary and then again by clauses," leaving the preamble to be considered last. The Secretary will read the first section.

The Secretary read the section as follows:

¶ 1. All men are by nature free and independent, and have certain inherent and inalienable rights—among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just power from the consent of the governed.

Mr. HASCALL. I move to strike out the word "men," where it occurs, and insert the word "persons."

Mr. ROBINSON. I am opposed to the amendment, I think the section is right as it stands. It means to say "all persons".

Mr. HASCALL. Mr. Chairman, If "men" is a better word than "persons" I think the word ought to be continued throughout the Bill of Rights. I find in other portions, the word "persons" used, but in the material part, where it is very proper we should take in all humanity, I find the word "men". I believe in calling a thing by their right names. If you mean to take in all human beings, let us use a more comprehensive term. It is true the legal gentleman (Mr. Robinson) who raised the point, probably considered it in connection with his legal business, where perhaps he may have found a precedent where a term like this would include something else. For instance, sometimes an indictment, where matters of this kind are mentioned, has to be made comprehensive enough to include another gender.

Mr. ROBINSON. I shall have to correct the gentleman. I refer the gentleman to Webster's spelling book.

Mr. HASCALL. I judge he is the gentleman who reads the spelling book.

Mr. THOMAS. Mr. Chairman, It seems to me the section is right as it stands. The word "man" does not necessarily mean a male being; it means "mankind". You find, in the Declaration of Independence, the same expression. "All men are born, etc" It seems to me the expression now, "all men, etc.," means "all mankind," or "all persons". It seems to me it is entirely unnecessary to make this change. We find in the Bible that "God created men in His own image" no one believes that means the male being; but mankind.

Mr. ESTABROOK. I appreciate the motive of the amendment. From the earliest history the word "men" is mentioned in the Bible. It is therein stated, on a certain occasion the Almighty power created man and then woman, male and female created he them. Genesis 4th, 1st and 2nd, so that concedes it a general term and refers to both male and female.

Mr. MASON. If the gentleman from Douglas on the other side (Mr. Hascall) had attended the Sabbath school with the gentleman on this side (Mr. Estabrook), it might have saved some discussion. I hope the motion will not prevail.

The motion was not agreed to.

Mr. McCANN. I move the adoption of the section.

Mr. ESTABROOK. Before that is put I have an amendment. I move to add at the end of the section, the following words: "Every human being, of full age, and resident for a proper length of time on the soil of the nation and State, who is required to obey the law, is entitled to a voice in its enactment, and every such person whose property is taxed for the support of the government, is entitled to a direct representation in such government."

Mr. HASCALL. Mr. Chairman, I move to amend by striking out the word " persons" and insert the word "man" and in support of my own proposition I refer the gentleman from Douglas to Genesis.

Mr. TOWLE. I would ask the gentleman's permission to put the word "male" instead of man.

Mr. HASCALL. I think it will satisfy the Convention, after consulting Webster's Dictionary, the Book of Genesis, and the Chief Justice, that it would be wrong to insert the word "persons" and I am in favor of keeping these general terms. I think it barbarous to say "human beings."

Mr ESTABROOK. I presume it was intended that should be done. That is the tone of the language employed in the first part of the first section; and that is to reiterate a similar passage in the declaration of Independence. Whatever we have to do is to be done in obedience to the provisions given. It is a recitation of the language there used and being used as here used, it refers to all mankind.

Mr. NEWSOM. I would ask if that amendment of the gentleman from Douglas (Mr. Estabrook) is intended to cover woman's rights?

Mr. ESTABROOK. I take pleasure in making the announcement that it is a step to accomplish that end; that if woman is to be really taxed, and has no representation, it is necessary to supply that important stone in the arch.

The CHAIRMAN. The question is upon the amendment to the amendment offered by the gentleman from Douglas (Mr. Hascall).

Mr. STEVENSON. I think the substitute or addition, would be proper to insert in the Article on Suffrage. I think it does not belong here. That the section as it reads applies to all he wishes, man meaning not only male but female; and if we wish to extend the rights of suffrage these gentlemen are talking about, let the Committee on Suffrage report an article, and not mix it in here where it has no place. I do not think the gentleman's substitute ought to be placed here. There is enough here, and I think it should be placed under the article on "Suffrage."

Mr. ESTABROOK. It is preparatory to the great idea that no one should be taxed without representation. It is an underlying principle of law, the foundation of all Republican governments. And therefore, this is its right place, I think.

Mr. NEWSOM. I believe, Mr. Chairman, unless the gentleman who made this motion insists upon the motion, the only question before this Convention is one of propriety, and to that I propose briefly to draw the attention of the Convention. If it is the object of the gentleman, and I think that is the chief and only one indicated, to engraft woman suffrage on this Bill of Rights, I think it eminently improper. This is not the place or time to raise that question, in my humble judgment. All he requires is given him in the term "men" this provision where it says "all men are made equal." He has, there, his point complete. Woman is equal with the man in the section as it stands. All the rights given to man are given to her. Therefore, in my judgment, it is improper to raise this question here at this time. It is not appropriate to engraft the question of "Suffrage" in the Bill of Rights. It is not incident to the rights granted in the Bill of Rights.

Mr. ESTABROOK. Mr. Chairman. There is not a word said about woman in the amendment, not a word about suffrage in it. It presents to view a fundamental idea, and if woman shall be found to come within its scope, then it means her; or if man, it means man. It simply means that if there are individuals within the jurisdiction of this state to be operated on by the provisions of the article; who are compelled to bear their share in the responsibility of government without having the corresponding privileges of the government, or if they are to be taxed and not have representation in the government, then it means the woman. And if the gentleman will concede that she is in that category; if the woman come to the threshold of this step, giving her the power to conduct her own business in her own way, and giving her the power to hold property in her own name separate from her husband; to sue and be sued in her own name; then let her have a place where she can be represented. And if she is compelled to obey a government she has had no hand in instituting and carrying on, then it means woman, and is within the scope of the amendment. If not in that category I ask nothing more for her. If it can be shown she has representation to correspond with her responsibility, I ask nothing more at your hands. But if it shall be found, after this has been amended, that she is compelled to bear the burdens of government the same as a male, and obey laws, in the making of which she has had no voice, then I shall ask that the law be righted, and the same right given her as to the male. Hence it being an underlying principle preparatory to the great idea that no one should be taxed without representation, there is no section so appropriate for this as this section.

Mr. HASCALL. Mr. Chairman, this is not a question of suffrage at this time. The question is whether we will use the words "human being" or the term "man". The gentleman from Douglas (Mr. Estabrook) intimated that this might be a captious amendment to his amendment. He quoted from Genesis, where it says that "God created man, male and female created he them." I have not been to Sunday school so much as the gentleman from Otoe (Mr. Mason) as was indicated a short time ago. But they established to the satisfaction of this Convention at least, as will be indicated by the vote, that the word "man" or "men" was comprehensive enough. Now the gentleman advocated that that term was as comprehensive as the word "persons" and when he introduced an amendment he used the words "human beings". Why put in this barbarous term, when there is no precedence for it to be found anywhere. I hope the Committee will not lose sight of the question before the Convention; that is, whether the amendment of my colleague shall be amended by striking out the word "man" and have inserted the word "men." Afterwards the question arises whether his amendment shall be adopted or not. There is a different issue in the one case to what there are in the other.

Mr. KIRKPATRICK. I think the gentlemen will not disagree on terms. I think the phrase "all men" includes all beings, but it is not included in the expression "no person" as it occurs in the Second section.

Mr. MASON. Mr. President. I

shall not now pause to consider a mere play upon words, but address myself to the considerations which are sought to be incorporated in this section. Let us analyse this proposed enunciation of the principles which underlie our government, let us see where the laying of our foundations will leave us, and what building we will construct upon the proposed foundation. I read the amendment. "Every person being of full age and resident for a proper length of time on the soil of the nation and state, who is required to obey the laws, is entitled to a voice in its enactment, and every person whose property and labor is taxed for the support of the government is entitled to a direct representation in such government."

That is the gentleman means to say the foreigner who has been an avowed enemy of this government shall have the right to plant his banners upon the soil of our country. He is allowed a voice in the government without having declared his willing allegiance to the government. The Chinaman who scoffs at your religion; who bows down and worships blocks of wood and stone; and who defiles your temples of Christianity with his blasphemy and who refuses to declare that he is a liege subject of your government—he is to be allowed to exercise the elective franchise. A most dangerous experiment indeed is sought to be interpolated in the very first section of the Bill of Rights. For what use is the experience of the long generations of men who have preceded us in the march of time but to add lessons of wisdom if we do not learn from these lessons of experience, how to order our government.

Gentlemen, my views upon this subject are not very well defined as yet, for this is a startling proposition, and this one suggestion that I have presented to the committee, that if it be incorporated in the Bill of Rights, serious results will follow, which will be a matter of alarm to the people of this state. But there are other objections.

Rights! Mr. President, that is a word which is very often misapprehended and misunderstood, There is such a thing in governments as "natural rights"—inalienable rights, and there is such a thing as "civil rights," and there is such a thing as "political rights"—three distinct classes of rights to which we are entitled in every government.

Now what rights are we considering in this Bill of Rights. I may quote here from Chief Justice Marshall—that the political rights of the citizens are just such rights as are vested in them by the fundamental law of the State. The natural rights, are such, that the fundamental law cannot regulate or take from the citizen—the right to life, liberty and the right to exercise the reasonable desires and powers of the mind. These are the natural inherent rights of man. There is a class of rights purely political, which are conferred upon us by the laws of our country. I am sure if the gentleman from Douglas (Mr. Estabrook) does not see this matter in the light I do, he would be as loath to insert this amendment as I am. If the gentleman will put this where it belongs among the political rights, and not among the inherent rights of the people, it may be possibly I will agree with him.

Now Mr. Chairman my reason for not incorporating this theory here is that we are considering natural rights which no person can take away, which no human authority can ever deprive a man of. I am not ready to say that human power cannot deprive a man of the right of supplement [suffrage.] I am not willing to say that a man debased by crime shall have the same rights as a man who from the exercises of the moral powers of his mind has an elevated and adorned character. Now I hold this and I hope that this Convention will feel it, that it is to be left to a vote of all the people, who shall exercise the right of franchise, in the proper place and time, but I am not willing to open up this wide door here. Gentlemen of the Committee I did not desire neither do I now desire to detain you, but I wish every gentleman to understand the far reaching effects of the amendment. Are you willing that every barbarian as soon as he shall land here, shall exercise full political power? I think that this move is a dangerous one. It is dangerous to our government. It is dangerous to our free institutions, to our public school system. I am opposed to this amendment coming in here, not that I am opposed to the enfranchisement of the women of our land, but because this amendment goes farther beyond what I am willing to go and opens up a mine that will destroy our free government. I hope this will not be insisted that this should go into this Bill of Rights but when we come to political rights I will be willing to consider it there.

Mr. LAKE. Mr. Chairman, I wish to say only a word on this motion to amend. I believe that I agree substantially with my colleague from Douglas (Mr. Estabrook) in what he is aiming at although I disagree with him as to the propriety of attaching it to this section. As it is I consider that this section includes all persons and refers to natural rights. Now I disagree with the gentleman from Nemaha that persons who violate the law have lost this natural right. He has the right to those same things as though he was a loyal citizen, but governments find it necessary, in order that good citizens may be protected in those natural rights, to deprive him for the time being of a portion or all of those natural rights. I believe that because he commits crime he is not naturally any less entitled to those rights than before, but the good citizens of the state may deprive him temporarily of those rights. This section says "all men are by nature free and independent, and have certain inherent and inalienable rights. To secure this right and the protection of property, governments are instituted among men;" and the government as I before stated makes certain rules to secure these natural rights, and as a consequence are obliged to take from persons guilty of evil practice, some of their natural rights. "Governments are instituted among men" and that word includes both male and female, it has been conceded here to day. and it is further declared that these governments derive "their just powers from the consent of the governed." Is not that complete and conclusive. If they are not rights exercised under the consent of the governed, they are not just rights, and it seems to me that the amendment would not make it any more complete than it is now. While I am in favor of the principle that the gentleman from Douglas lays down, and shall support it at the proper time and place, yet I think it would mar this section. I am opposed to the amendment, not because I am not in favor of the rights of females, but because I think it is out of place.

Mr. MYERS. Mr. Chairman, I have but a few words to say in regard to this proposition, I concur with my colleague (Mr. Lake) that this does mar this section and if it is to be inserted it will be better added at some other place. I think that this section covers and comprises all the natural rights that belong to the governed. This is simply a declaration of those rights as proclaimed in the Constitution of the United States, that among the rights of men are " life, liberty and the pursuit of happiness." We all have natural inherent rights that the government can not deprive us of; that cannot be taken away from us, but exercise of these rights, for the good of the governed are regulated by law, and it is doing injustice to the government to say that it undertakes to destroy these rights. It would be an injustice to say that the governments are organized for the purpose of abridging those natural rights. A legislature is organized for the purpose of throwing safeguards around our national natural rights not to destroy them. When it undertakes to abridge or destroy, it becomes a tyranny; and when it does that, we have a right, as laid down in the Declaration of Independence, to resort to rebellion and overturn it. We admit in this country, that every person has a right to vote, to form a part of the government, to enjoy all its rights and privileges as regulated by law, and sir, I am not afraid of a civilization of the east marching over the broad prairies of our country and overwhelming our churches, and school houses, and our institutions of liberty. I am not afraid sir, of the millions and billions in the east leaving their home across the ocean and coming here to enjoy those rights. If they do it under the regulations and under the laws we have established, if they come down to our order of life, to our order of civilization under the laws of the United States which require them to take an oath of allegiance to this government; I sir, will trust any human being who comes to enjoy the liberties of the government. I do not desire, sir, to make a speech on this question, but simply rose to state that all rights,—the rights of person and property—are regulated by law, and that the rights of citizenship are regulated by law, and that is what we propose in this Convention.

Mr. MASON. Mr. Chairman, I only rise to correct a misapprehension on the part of the gentleman from Douglas who first spoke (Mr. Hascall). I admit this, as the section now stands unamended, that the State have the right to disfranchise; but if the amendment of the gentleman from Douglas (Mr. Estabrook) is carried, it would deprive them of the right so to do. If the gentleman has the amendment before him he will see that at once. Hence I conclude that the gentleman from Douglas did not desire to misrepresent me in this regard and there is a mistake in misapprehending my position. I fully concur with the views of the gentleman, and concur with the second gentleman on the floor; reminding him, however, that Solomon spoke of a class of individuals, a great number of years ago that knew no fear, but rushed on to certain ruin; whether he is of that class, I am unable to say.

Mr. TOWLE. Mr. Chairman. In regard to the amendment proposed by the gentleman from Douglas (Mr. Hascall) and again amended by another gentleman from Douglas (Mr. Estabrook), although the amendment to the amendment should prevail, the principle would be there, and to the principle itself, or policy of the principle, I wish to speak a few words. This question of woman suffrage has been unexpectedly sprung at this moment; I do not believe the Convention is ready now to meet it, but they expected and intended and desired to meet this question when it should come up in its proper and appropriate place in the report of the Committee on Rights and Suffrage. There are many individuals here desirous of being heard on that subject, and I do not believe they are now prepared; neither do I believe the Convention at a time just immediately preceding an adjournment which will take place to-morrow, should go over this ground. Let us find out where we will be placed if we put this proposition in this Constitution, in the Article on Bill of Rights, as we find attempted to be done. We find ourselves lying on the broad principle that no woman, as well as any other class, under any circumstances shall be deprived of their right of suffrage if they have been residing a certain length of time in our State. Now, Mr. President, in what way, manner and method should this question of the right of woman to vote be submitted to the people of this State? Should it be absolutely in the body of the Constitution (and it is doubtful if the Constitution would not be rejected by that course). If this question goes absolutely in the Constitution; if it is not submitted in a separate clause, as it should be, there the symmetry of this Constitution and this fabric we are now building will be thrown out of proportion. This, in connection with other objections will raise such an element of opposition, such a furore of strength against it, that it will fall to the ground by an overwhelming majority of the votes of the people. I believe, on this very question alone, it would fall. What is the remedy? To leave this Constitution symmetrical and beautiful, as we should build it from the very foundation, leaving this question unsettled, and this proposition as it now stands. If in the after progress of this work we should say that woman shall, or shall not be allowed the right to vote, we can then adopt this section. We come to the right of suffrage and take it as the committee has incorporated it, or as we desire to engraft it in the Constitution. If there are doubts—as I know there will be, and I believe those doubts will resolve themselves into a certainty—that this Constitution will not be adopted, it becomes our imperative duty, if we wish to see this Constitution adopted, to submit this in a separate proposition, and not allow it to go into the body of the Constitution. I have nothing to say at the present time in relation to the abstract principle advanced in this proposition. I am only speaking as to the policy, and the question whether it is expedient and proper at this particular time, and in this particular article, to insert this proposition. In my judgment it is not; therefore I shall vote against the proposition.

Mr ESTABROOK. It is said every family has a skeleton; in many families that skeleton is woman suffrage. In this little item I claim woman suffrage is not named; the fundamental principle goes to the bed rock.

Mr. TOWLE. Did you not expressly declare it covered that ground?

Mr. ESTABROOK. I declared she was in the category of those men tioned in the amendment. This Bill of Rights is intended to declare abstract principles, it has no binding force whatever. For instance, I will call the attention of the gentleman from Otoe (Mr. Mason) and see if he is frightened by the workmanship of his hands. See whether—in view of his own reasoning in regard to the horrors that may be entailed on this State by the influx of the Chinee—whether he does not shudder when he reads section 22, for instance: "Aliens, who are, or may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens."

Mr. MASON. That is right.

Mr. ESTABROOK. They require a right to build a place wherein they shall maintain their idols, wherein they may worship. I believe it is right because it is in obedience to the fundamental idea, that no man shall be interfered with in the enjoyment of his religion. He shall worship howsoever whethersoever and whensoever he may. In regard to the amendment proposed, let us see if he is not paralyzed. The first section closes with these words: "his natural rights." Jefferson laid them down as natural rights. Who secures these rights? Every human being of full age and resident for a certain time in the State, which means he shall be a citizen,— he shall be upon the soil of the State and nation long enough to acquire the rights of citizenship,—every such person who is required to obey the law, who is governed, and constrained to obey the government is entitled to a voice in the enactment of its laws. The very idea carried to its consummation should be made applicable to the subjects of the government which we are about to establish. It goes on and extends the civil rights and natural rights of no class. Every such person thus having the necessary qualifications, thus having been here the necessary length of time, thus being of full age, whose property or labor is taxed, upon whom you impose the burden of government, upon whom you impose the responsibility of government, whose labor is taxed for the support of the government, is entitled to a direct representation in such government. Every person upon whom you impose a burden shall have rights which correspond to those burdens and responsibilities. Is there a man so frightened by the ghost of freedom, of suffrage, who will not say "aye" in regard to the propriety of it. I tell you this is not symmetrical unless you have carried this well known fundamental thought to its practical consummation.

I propose, to secure that class of individuals the rights and privileges of which they are now deprived.

Motion to Rise

Mr. WILSON. Mr. Chairman, I move that the Committee do now rise report progress, and ask leave to sit again.

The house divided, and the motion was lost.

Mr. NEWSOM. Mr. Chairman, I desire to say a few words. The gentleman from Douglas (Mr. Estabrook) thrust out the idea that the woman suffrage question is a ghost and resides in the houses of some gentlemen of the Convention. I would answer that the ghost is certainly with him, because, for some reason or other, he cannot distinguish the difference between a political right and a natural right. The question he proposes is not a natural right, but it is a political right, the right of suffrage. And whether it shall go now into the Bill of Rights, or go in the Article on suffrage, is a question which I think should be decided by this Convention. He says that every person who shall be required to obey the law is entitled to a voice in the making of it. Is that an inherent and a natural right, or a political right? This question has nothing to do with the natural rights at all.

Mr. HASCALL. Although I do not consider this subject proper at this time, yet it has taken a wide range, and I want certain errors corrected that are sought to be inculcated here. These rights have been described as, natural, civil, and political. The section lays down the broad doctrine that all have the same natural rights, and thus it says "to secure these rights and the protection of property governments are instituted among men;" then, if this is true governments are instituted to secure natural rights; and then it says "governments derive their just power from the consent of the governed." Now who are the governed? Do not you mean the whole community and body politic? When you say "governments are instituted among men, and derive their just powers from the consent of the governed," you speak of political rights. They are both connected—civil and political—this section groups them. And still members come upon this floor and enunciate this great principle, or define rights to be natural, civil and political; and why? After they do it that proves nothing, for the section reported by the chairman of the Bill of Rights inseparably connects them. The great seal of the State of Nebraska contains the motto "Equality before the Law." What does that mean? It is speaking of the political right. They are equal before the law. Then that being the case, upon what foundation stands these arguments with regard to Chinamen and colored men and other classes? As I understand the chairman of the Committee on Bill of Rights, he says that when certain persons are in the ascendancy then he is willing to come on and disfranchise them. Does he mean a minority shall rule a majority? Does he say when certain persons get the ascendency, as far as government is concerned, that he, as a member of the community, will come in and fasten institutions that are repugnant upon the majority? That would not be a Republican form of government, but it would be bordering on that form of government the gentleman referred to with so much emphasis, viz:—a monarchial form of government. I see it is the desire of some to ignore the amendment I proposed to the amendment introduced by my colleague General Estabrook. They do not seem to talk in relation to that. But it is not technical; but is a matter of substance. This section is broad enough if the word "persons" had been used in the first instance; and would have disposed with all cavil.

When the question of suffrage arises, I shall place myself right upon that question. But as far as this general enunciation is concerned in the Bill of Rights, if you use the word "persons", I am satisfied it is a failure. But, although I may vote for my amendment to the amendment, still I shall be compelled to vote against the amendment of the gentleman, for the reason that this subject may properly come in another part of the Constitution.

Mr. MASON. Mr. Chairman, I have listened attentively to the remarks of the mover of the motion, with an earnest desire to appreciate and comprehend his views; and I still think the difference between us arises more from a misapprehension, either on his part, or on mine, of of what the Convention and the Committee propose to enunciate in the first section. The Committee propose simply to enunciate the natural rights and not civil rights. Suppose we consider it attentively for a single moment. "All men are by nature," and we might insert "and have by nature certain inherent and inalienable rights, among these are life, liberty and the pursuit of happiness. To attain these natural rights, or secure these natural rights, amongst which are the protection of property, governments are organized among men." Now, the the right of elective franchise never has been considered among any classified by Beveir, by his law dictionary; or by Webster, among the natural rights. Neither does it so classify it by any law right. It is simply a political right. If we ignore or deprive political rights from the

Bill of Rights, it is making an entire new use of the Bill of Rights. The whole body of the organic law defines the political rights of your citizens; the political rights of the government, the political rights of the Legislature, the political rights of the judiciary, the political rights of the citizen, but your Bill of Rights, standing in the forefront in the battle of humanity, asserts the natural God-born God-inherited and inextinguishable rights. Now, I think if America ever had a great man, if she ever had a pure man, and the man that comprehended the whole nature and purpose of government from its conception to the end from keel to turret, it was Webster. And when he defined the natural rights of man, they were covered in this single sentence. And the restless ingenuity of to day, or the passion of to-morrow, can neither take from nor add thereto. And hence it is, I desire this Convention should fall into no misapprehension. The Bill of Rights asserts only the natural rights, and the balance of the Constitution is devoted to the assertion of political rights, political duties, and political privileges and immunities, and I think the Committee now understand that the subordinate Committee raised by this Convention took all this matter into consideration; and the view I think they desired the chairman should urge upon this Convention. And for these reasons, I submit it to the Convention, hoping the proposed amendment will be rejected.

The CHAIRMAN. Gentlemen, the question is now upon the amendment to the amendment.

The amendment to the amendment was not agreed to.

The question now recurs upon the amendment.

The amendment was not agreed to.

Mr. MASON. Mr. Chairman, I move the section be adopted.

Motion agreed to.

Mr. LAKE. Before that motion is put, Mr. Chairman, I wish to call attention to a typographical error which I noticed in the printed copy we have before us, which reads "just power." I think it should read "just powers." I suppose it will be corrected by common consent, and that no motion will be required.

The CHAIRMAN. The correction will be made.

The question now, gentlemen, is upon the adoption of the section.

The motion to adopt was agreed to.

Mr. CASSELL. Mr. Chairman, I move the Committee rise, report progress, and ask leave to sit again.

The motion was agreed to.

Adjournment.

Mr. HINMAN. Mr. President, I move to adjourn until 2 o'clock this afternoon.

The motion was agreed to.

So the Convention (at twelve o'clock and eighteen minutes) adjourned.

Afternoon Session.

The Convention met at two o'clock p. m. and was called to order by the President.

Communications.

The PRESIDENT. Before we proceed to any other business here are two communications; the Secretary will read.

The Secretary read a communication from the Auditor as follows:

State of Nebraska,
Auditor's Office,
Lincoln, June 29, 1871

Hon. S. A. STRICKLAND,
President Constitutional Convention.

Sir:

In reply to a resolution of your honorable body, I have the honor to state that to this date no bills for printing for the Convention have been presented at this office.

Respectfully yours,
JOHN GILLESPIE,
Auditor.

J. O. WEST,
Deputy.

The Secretary read a communication from the Register of the Land office at Dacota City, as follows:

Land office, Dacota City, Neb.,
June 26, 1871.

Hon. S. A. STRICKLAND,
President Constitutional Convention, Lincoln, Nebraska.

Dear Sir:

I herewith have the honor to transmit to you a list of entered lands, which seems to be referred to in the resolution of your honorable body, a full history of the matter of the lands embraced in the list left with me by the state agent, was by last mail forwarded to his Excellency Governor James.

Permit me to state briefly this much. There has never been an approved list of selections for Agricultural College purposes presented at this office, nor any formal application to enter lands for that purpose

I have the honor of being,
Very Respectfully,
Your obedient servant,
GEO. W. WILKINSON,
Register

The reading of the list of lands referred to in the above communication, was on motion dispensed with.

Mr. McCANN. I move that the reading be dispensed with and this communication be referred to the Committee on Education, School Funds and Lands.

The motion was agreed to.

Bill of Rights.

Mr. McCANN. I move that we do now go into Committee of the Whole on the Bill of Rights.

The motion was agreed to.

So the Convention resolved itself into Committee of the Whole on the Bill of Rights. Mr. Griggs in the chair.

The CHAIRMAN. The Secretary will now read section second.

The Secretary read section second as follows:

¶ 2. No person shall be deprived of life, liberty or property without due process of law.

Mr. LYON. Mr. Chairman, I move that that section be adopted.

The second section was adopted.

The Secretary read the third section as follows:

¶ 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, nor shall any preference be given by law to any religious denomination or mode of worship.

Mr. ABBOTT. Mr. Chairman, I desire to amend the third section by striking out all after the word "guaranteed" in the second line to and including the word "state," in the sixth line, and insert in lieu thereof the following: "but the civil rights, privileges, or capacities of any person shall in no wise be increased or diminished on account of any religious opinion or belief."

Mr. ABBOTT. This amendment governs all in general terms, not making a specialty of this or any other subject. It rules the subject matter in general terms and is good for all time to come.

The motion was not agreed to.

Mr. MAJORS. I move that the section be adopted as it stands.

The motion was agreed to.

The CHAIRMAN. The Secretary will read section four.

The Secretary read the section as follows:

¶ 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty, and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

Mr. LAKE. Mr. Chairman, I move the adoption of the section.

Mr. WAKELEY. There is a typographical error in this section. In the third line the word "for" should be inserted before the word "justifiable ends." I move to insert that word. I suppose it is in the manuscript bill in the possession of the Secretary.

Mr. WOOLWORTH. I would like to enquire what paper the clerk reads from.

The CHAIRMAN. From the printed bill.

Mr. WOOLWORTH. Would it not be altogether better to read from the manuscript rather than from the printed bill. We will then understand exactly what we are about.

Mr. LAKE. It is usual to read from the printed bills, in order that amendments may be inserted. Those amendments are noted by the chairman of the committee on the printed bill which he has before him, and this saves the original from being mutilated.

Mr. MYERS. Mr. Chairman, The practice I believe in all legislative bodies is to read from the printed bill. I never yet have known where the original was read either by the clerk or chairman. If there are typographical errors it is the duty of the committee to correct them. It is more convenient and proper to read from the printed matter because it is here by authority of the Convention.

Mr. WOOLWORTH. I would like to enquire how it is possible to make a comparison between the printed bill, unless we have some way of comparing it with the original. If the clerk reads the original and the chairman and members hold the printed copy, any typographical mistake would instantly be brought to his attention, otherwise it might be overlooked.

The CHAIRMAN. If there is no objection the Secretary will insert the word "for" before "justifiable."

No objection being raised the word

was inserted.

The CHAIRMAN. The Secretary will read section five.

The Secretary read the section as follows:

¶ 5. *The right of trial by jury* as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men, may be authorized by law.

Mr. HASCALL. Mr. Chairman, I have an amendment to offer to this section. I propose to amend by adding after the word "civil" in second line the words "and criminal," and after the word "peace" in the same line, the words "and police magistrates."

Mr. WAKELEY. Mr. Chairman, I shall be glad to hear from the mover of this amendment, what particular benefit he proposes to secure by its adoption. If the amendment be inserted, it ought to be qualified by some clause indicating how far the amendment recognizes the justices of the peace.

Mr. HASCALL. The point, Mr. Chairman, I wish to reach by the proposed amendment is to give the right to justices of the peace to try criminal cases without summoning into court twelve men to try the issue, also to dispense with juries of twelve men or the necessity of a jury of twelve men in police magistrates courts, or before the police judge. It is a useless expense, it is unnecessary to have a jury of twelve men in a magistrate's or justice of the peace court to try a petty case over which they have jurisdiction. I do not imagine that under the amendment they would get any jurisdiction to try a case of felony, but would relate only to trying cases of misdemeanor.

Justices of the peace have now the right to try and determine cases of misdemeanor and punish without indictment or presentment by a grand jury. If there is no doubt about the propriety of this amendment a provision might be inserted in cases of misdemeanor. I introduce that merely to insert the idea, and if the amendment does not meet the views of members, as far as phraseology is concerned, I would suggest that the chairman of the committee make that right.

Mr. THOMAS. I am in favor of an amendment to this section. I think it should not be made necessary to have a jury of twelve before a justice of the peace. But we do not propose. in this Constitution to give the justice of the peace jurisdiction. They have agreed to leave that to the Legislature and I would suggest to the gentleman who made the amendment, to make it "in trials not of record by a jury of less than twelve men, may be authorized by law." It seems to me we should not make it necessary in all cases before a justice of the peace, or a police magistrate, to have a jury of twelve. In some precincts it is difficult to get a jury; and if we insert that no criminal case whatever can be tried before a justice of the peace or police magistrate without a jury of not less than twelve men. I would amend by saying "in trial not of record by a jury of less than twelve."

Mr. STEVENSON. I would suggest to the gentleman from Nemaha

(Mr. Thomas) that there should be something inserted in relation to county courts. I believe they are to be considered as courts of record. It would appear necessary in order to accept this, to bring it in county courts.

Mr. HASCALL. Mr. Chairman, I do not know that it is proposed to confer upon this county court criminal jurisdiction. If so, it would be well enough to make that exception.

The CHAIRMAN. Gentlemen. The gentleman from Douglas (Mr. Hascall) has moved to amend by inserting after the word "civil," the words "and the criminal," and after justice of the peace," insert "police magistrate." The gentleman from Nemaha (Mr. Thomas) suggests, and it is accepted, that it read "but in trials in a court not of record, by a jury of less than twelve men, may be authorized by law." So that the section, as amended will read:

Sec. 5. The right of trial by jury as heretofore enjoyed, shall remain inviolate, but in trials in a court not of record, by a jury of less than twelve men, may be authorized by law.

Mr. WAKELEY. Mr. Chairman. I don't like the proposed amendment. This matter was well considered I think, by the Committee who had charge of this bill, of which the gentleman from Nemaha (Mr. Thomas) was a member; and I think the broad powers which would be conferred by that amendment did not prevail with the Committee, and does not commend itself to my judgment. It is in the power of the Legislature, in all cases, to define what shall be courts of record, and courts not of record. Very large jurisdiction may be conferred by the Legislature upon courts not courts of record. County courts may be established, which the Legislature might provide should not be courts of record. And thus the immemorial right of trial by a jury of twelve men might be affected and impaired. I do not know that I object seriously to the proposition of my colleague (Mr. Hascall), that misdemeanors, when triable at all, before the justice of the peace or inferior magistrates may be by a jury of less than twelve men. I have prepared an amendment which carries out that idea, which I will state to the Convention before the vote is taken. I will move to amend, when proper, to insert after the words "justice of the peace," "or of misdemeanors before the justice of the peace or inferior magistrate or tribunals." The effect of that amendment would be that under the section, as amended, all civil cases might be tried before the justices of the peace, if the Legislature shall so provide by a jury of less than twelve, and misdemeanors tried by justices of the peace or inferior magistrates

Mr. THOMAS. Mr. Chairman, The gentleman from Douglas (Mr. Wakeley) has expressed the same opinion I entertain about this matter. I am not particular about the form of words used, nor am I particular about the amendment I offered.

Mr. HASCALL. The phraseology of the last proposition is very bad, but I think it carries out the idea.

Mr. LAKE. I would suggest that the amendment be "trial of civil cases, cases of misdemeanor before the justices of the peace and inferior magistrates by a jury of less than twelve men, may be authorized by law."

Mr. WAKELEY. If my colleague will put that amendment in writing I think it will accomplish the same purpose.

Mr. LAKE. I will do so.

Mr. ESTABROOK. Well, while the gentleman is writing his amendment I will speak. I presume that lawyers, so well versed in cases of the law, are not acting in this matter without being fully aware of the barriers to the proposed amendment. To criminal cases it is a matter of considerable doubt. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury. Now suppose the individual is charged with a criminal misdemeanor and shall demand that he be tried by a jury—

Mr. THOMAS. I would like to ask the gentleman what he reads from?

Mr. ESTABROOK. The Constitution of the United States, Article 5, "Bill of Rights."

Mr. LAKE. I would like to ask the gentleman if the Constitution don't provide that the accused shall be indicted by a fair and impartial jury.

Mr. ESTABROOK. Yes sir.

Mr. LAKE. I would like to have the gentleman read the provisions in the Constitution, for trial by Grand Jury.

Mr. ESTABROOK. I read from Article 5th of the Bill of Rights: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, wherein actual service, in time of war or public danger," etc.

Now I under take to say that in no place can a person be held for a criminal offense without being indicted; and will anybody contend here that we can adopt laws that will run counter to the laws of the United States?

Mr. THOMAS. Mr. Chairman, I will say that the article that the gentleman reads has to do with the United States courts, but has nothing to do with the State courts.

The CHAIRMAN. The amendment as offered by the gentleman from Douglas (Mr. Lake) is as follows:

The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace and police magistrates by a jury of less than twelve men, may be authorized by law.

Mr. HASCALL. The Constitution of the United States provides that a person shall be tried for a criminal offense only after having been indicted by a grand jury. If the gentleman from Douglas (Mr. Estabrook) considers that this provision applies to the State courts, how is it that the state of Michigan can abolish the grand jury system, as she has done?

Mr. MANDERSON. Mr. Chairman, I will call the gentleman's attention to a provision in the Constitution of the state of Michigan. The Constitution of 1850 abolished the grand jury system, as to trial by petit jury, the Constitution of 1835 reads, "the right of trial by jury shall remain inviolate, but shall be deemed waived in civil cases, unless demanded in the way prescribed by law." We have the precedent in Michigan, of the entire abolition of the grand jury system, as to the question as to the right to make this change from the Constitution of the United States. I may state, for the information of the gentleman that the matter was fully discussed among the members of the Committee on Judiciary, and we found cited numerous cases where it was decided that this provision applied to the Federal courts only, and not to state courts.

Mr. MASON. Mr. Chairman, I desire to offer a substitute—"but the trial of misdemeanors and civil cases may be authorized by law before justices of the peace, police magistrates and inferior tribunals, etc." The section would then read—"The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of misdemeanors and civil cases may be authorized by law before justices of the peace, police magistrates and inferior tribunals by a jury of less than twelve men."

The CHAIRMAN. Gentlemen, the question is upon the adoption of the substitute.

Mr. WAKELEY. Mr. Chairman, I don't quite like the language, but I like the idea of the amendment of the gentleman from Otoe (Mr. Mason) I think I like the language of the amendment offered by my colleague (Mr. Lake) better. However, that is a mere matter of taste.

Mr. MASON. Mr. Chairman, I withdraw my amendment.

The CHAIRMAN. Gentlemen, the question is upon the amendment offered by the gentleman from Douglas (Mr. Lake.)

The Convention divided and the amendment was adopted.

The CHAIRMAN. Gentlemen, the question is upon the adoption of the Section 5 as amended.

The motion to adopt was agreed to.

Section Five, as adopted reads as follows:

The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases and misdemeanors before justices of the peace and police magistrates by a jury of less than twelve men, may be authorized by law.

The Secretary read section sixth as follows:

¶ 6. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched and the persons or things to be seized.

Mr. LAKE. Mr. Chairman, I move its adoption.

The sixth section was adopted.

The Secretary read section seventh as follows:

¶7. All persons shall be bailable by sufficient securities, except for treason and murder, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it.

Mr. McCANN. I move that the word "securities," in the first line, be stricken out, and the word "sureties" be inserted.

The motion was agreed to.

Mr. MANDERSON. Mr. Chairman, I move that the section be adopted.

The seventh section was adopted.

The Secretary read the eighth section as follows:

¶ 8. No person shall be held to answer for a criminal offence, unless on an indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger.

Mr. PHILPOTT. I move to amend that section by adding, "Provided, that the grand jury system may be abolished by law in all cases."

I will say, Mr. Chairman, that my object in offering this amendment is this; that I think it ought to be left to the Legislature to abolish the grand jury system if they see fit. There was a time when we needed it, but at the present time it is needless and a great deal of expense on the state.

Mr. MAXWELL. Mr. Chairman, I am not in favor of abolishing the grand jury system.

Mr. WAKELEY. Mr. Chairman, I am not willing to have the vote taken upon the proposition of the gentleman from Lancaster (Mr. Philpott) without some suggestion from those who are not yet prepared to yield acquiescence to the modern doctrine that grand juries ought to be abolished. It has not been my fortune, or misfortune, to live in a state where this experiment has been tried. I know it has been said by lawyers and by people elsewhere or here that grand juries are a relic of a barbarous age, adopted to meet a need of civil society which no longer exists.

I have lived where no man could be put upon trial for a criminal offense except on indictment found by a jury of his peers. The only question is whether an accusation can be made by some third party better than by a grand jury. If this power is to be vested in some other body there must be a responsible prosecutor to represent a man before a jury of his peers for trial upon a public charge. Shall it be the prosecuting attorney of the district and county? Now sir, without being able to speak from experience at all I confess that my mind strongly clings to the idea that this system is a wholesome system. I know it is said that a secret inquisition sitting upon the conduct of men is contrary to the genius of our free institutions, and I know that men are often presented for trial by a grand jury who are not guilty, but sir, when twelve men have said, on the uncontradicted evidence before them, that they believe that a man has committed crime, there is some reason for a trial. I do not believe it will often happen that a man will be prosecuted from malice or from unreasonable cause. Upon the other hand I can imagine cases where crime is rife in the community; where men have banded together for criminal purposes, and have become stronger than any single arm; where public prosecuters, I care not how firm they may be, I care not how resolute they may be to do their duty;

would shrink and quail before the conspiracy and combination to defeat them all. Sir. I have seen such cases, I have lived in communities, and there is no man here, especially in this region west of the Missouri river, who cannot recall eastern cities where crime has overspread the authorities; where men have defied the laws; where men have taken the awful responsibility of life and death into their own hands; have overthrown the law; have usurped the functions of court, juries and executors of law. In such a community as that, is it reasonable to expect that a single prosecutor, with no more interest in the preservation of order and the protection of life, person, and property than any other citizen, would brave such a combination, and bring such men to the bar of the courts for trial? No sir! In such times as that, I insist that there is safety in this traditional institution of a grand jury. I am unwilling to clothe the Legislature of this State with power to abolish that institution. I hear no serious objection to the system except that it is expensive, or this phrase, that it is contrary to the spirit of the age, and of our institutions. I believe that where one innocent man is put upon his trial under the grand jury system, without reasonable cause, I believe, that if we abolish that, 19 men, who ought to be put upon their trial, would go without justice. You cannot buy nor terrify 23 men who constitute a grand jury, but influences may be, and will be, as they always have been, brought to bear upon individual men, which would have no effect upon a responsible body like the grand jury. Now, sir, in this unstudied way I have presented some reasons which lead me to think this law should pass before we authorize this innovation. I think, sir, if we give the Legislature any power over this subject, we ought not to clothe them with the power to abolish the grand jury system, we ought, in my judgment, to go farther than this, to leave it with the Legislature to provide, if experience shall justify the wisdom of so doing, that men may be put upon their trial for certain defined offences, without the intervention of a grand jury. I have been told, Mr. Chairman, by legal gentlemen from the State of Michigan, that under the existing system in that State, grand juries have not been abolished, that the institution theoretically remains, but that it is discretionary with the courts whether or not they have a grand jury called and empanelled. I do not speak from any knowledge of the system in that state, but such is my information. If we see that the Legislature of this State may abolish the system of grand juries, when they shall have exercised that power, they will have exercised it finally and beyond recall. If we give them power to abolish and they exercise it, they will have no authority, as I understand it, to restore the system if experience should warrant the change. Now, sir, if a majority of this Convention think that the Legislature should be left free to venture upon this experiment, I would have it so provided that any mistake in the exercise of power might be corrected; in other words I would have this institution of grand juries remain. I would not give the Legislature power to abolish it; I would not go further than to allow them to try the experiment of dispensing with grand juries in certain cases; making provision for selecting grand jurors as usual and giving the courts of the State power to convene and empannel grand juries whenever the necessities, the exigencies or convenience of the public may require it to be done. I think I have no unreasonable prejudice or preposession in favor of grand juries, but I know that for 200 years grand juries have been looked upon as valuable auxiliaries in the administration of justice in the land from which our government was derived, as well as under our Federal form of government, and in nearly all the States of this Union. I ask gentlemen to consider that every innovation is not necessarily an improvement, I ask them to go slow in overturning the ancient land marks of our criminal jurisprudence.

Mr. PHILPOTT. Mr. Chairman, The object of this amendment is not to abolish the system but leave it in the hands of the Legislature, so that they may abolish it if they think it necessary. For my part, I should like the gentleman (Mr. Wakeley) to make an amendment to the effect he has stated. I would be willing to accept such an amendment. I should like to see that experiment tried in this state. I would like, at least, that this Constitution may be so formed, that they have an opportunity to try the experiment.

Mr. McCANN. Mr. Chairman, Although not a member of the bar, and perhaps not expected to speak on this subject, I do sincerely trust that the gentleman from Douglas (Mr. Wakeley) will adhere to the position I understand him to assume. I hope no amendment will be made and no discussion will be left to the Legislature of this State to abolish grand juries. I admit, sir, that the grand jury system is expensive, I admit, at least I know, that it is often abused; but still, I believe, we cannot afford to dispense with it. I believe it is far better that we should expend thousands of dollars, and far better that we should submit to some abuses, rather than abolish this great land mark and that we should dispense entirely, or leave it in the power, at the discretion of the Legislature of the State to abolish this system, and thereby work a greater injury than can be experienced by submitting to this expense, and the abuses which may at any time exist. I believe the interests of the State for the present and the future will be subserved by allowing this Article to remain just as it is. I hope no change will be made; I believe it was wisely formed and its workings will be for good.

Mr. PHILPOTT. Mr. Chairman, I withdraw my amendment.

Mr. THOMAS. Mr. Chairman, I desire to renew the amendment which has been withdrawn. I move to amend by adding the words "provided, that the grand jury system may be abolished by law in all cases". It seems to me that it is highly proper that we should leave this matter to the Legislature. There was once a reason why the grand jury system should be insisted on, when it was in the power of any individual to prevent prosecution. I cannot see the necessity of a grand jury system as it is now, is it not useless, and is it necessary? Can any man say it is necessary that in all cases the grand jury should act? I admit there may be times when it is needed. Would not the Legislature provide for the institution of a grand jury? I do not understand that we provide for the abolition, by any means. I do not understand that it has been abolished in those States where it does not exist. I understand in Kansas, although there is no provision in their Constitution which requires indictment by grand jury in every case the judge is permitted, if he sees proper, to call a grand jury. Is it not better to leave this matter to the Legislature? It seems to me they will deal differently with this subject than they did ten years ago. I am in favor of leaving it to the Legislature. I am satisfied that crimes will not go unpunished, but if it appears that in any part of the country, or in any cases, that bands of men are bound together so as to prevent prosecution, the Legislature would make some provision to enable the courts to see they are properly prosecuted. I do not understand that if the grand jury system is once abolished it can be instituted again. If that is desired I am in favor of some amendment to try the experiment, and if it does not work then to reinstate the grand jury system. I would like to see the amendment adopted.

Mr. MYERS. Mr. Chairman, I happened to live the greater part of my life in a state where the grand jury system has existed for over 250 years. In the great state of Pennsylvania this feature in our administration of justice was incorporated into her law the moment she attained the state existence; and it has continued there, uninterruptedly, up to this day, without any complaints or effort to interfere with its operation. Although they have had but two constitutional conventions for a period of seventy odd years; and now have the power of altering their Constitution once in five years, no attempt has been made to disturb that branch of administration of Justice; and in no other state has there been a greater observance of the laws. No riots, no lynch law; but all, as far as I know, has been in strict observance of the law. I never heard objections brought to the grand jury system in that State; and I was surprised to find so much objection existed in the western part of our country. Is it not a saving of expense? The court is itself saved the annoyance of considering cases unworthy of notice. And in cases where individuals are attempted to be dragged before courts of justice, there is a tribunal which fully investigates the character of the charge, and if there is not sufficient cause it is discharged. I believe it would be unwise to confer upon the Legislature the power of abolishing or reinstating. Let it be still a part of our permanent system of Justice. I believe it to be an argument against lynch law that persons shall have a trial and examination into their cases by a jury; and that shall answer all practical purposes. I hope the Convention will let it remain as it now is.

Mr. THOMAS. I wish to modify the amendment I offered, so as to provide that the legislature may provide for the trial of any or all criminal cases without the intervention of a grand jury.

Mr. ESTABROOK. That, Mr. Chairman, it seems to me, would enable us to try the experiment, if it be an experiment, without abolishing the grand jury. This Legislature can exclude and leave the law as it otherwise would be without this. If it be so that you can now possibly do without it, hit upon some scheme that shall have reason and sense in it to take the bands from our heads that have been there for the past two hundred years, I am in favor of doing it. You now go to the expense of summoning and drawing sixteen men in our own courts, who attend; and a large portion are excused, so that before you get through you have twenty-five men, who are paid per diem and mileage. And what occurs in the grand jury room, and who, as a general rule, pretty much controls the grand jury? The prosecuting attorney, and when he desires an indictment should be found they find it. That is the general rule. Some cases are excepted. If we follow the rule as in Pennsylvania, invariably I think, it is a rule, so well fixed there that the case before it goes into the grand jury room shall be heard by a committing magistrate. I think there is hardly a case in Pennsylvania and any of the older states, that, before it goes into the grand jury room is not brought under the review or a committing magistrate. Judge Black, of Pennsylvania, a former judge in and Governor of Nebraska, used to instruct the juries here in accordance with the rules of practice in Pennsylvania, that that was the right plan. I have known, in the practice I have had with grand juries, that there are very numerous instances where individuals seek the grand jury rooms for the purpose of making them an engine to carry out their own scheme for prosecution against some hated enemy or rival and if they secure an adjournment they go away and boast, as I have known in a thousand instances, that it was a prima facie charge of crime. It is not now as it was once. Under the provisions of the common law the grand jurors' oath contained an injunction of secrecy, which is omitted in our practice, and the man was guilty of contempt if known to reveal any of the secrets of the grand jury room. He is not now required to keep his own counsel. He goes in and out, and makes the proceedings of the grand jury room a matter of fireside conversation, and it is known broadcast, especially if there is any interest felt in the proceedings. It is known that originally, the grand jury was for the reason that the common magistrate could not try. And it was for this reason that a court of impeachment was established, that a man be tried by his peers. But, all these reasons have faded out and subsided. There are none in Nebraska now. No man is fit to be a prosecuting attorney who is willing to stand up before a court and make his prosecution in the way of his professional or official duty. So it does seem to me that the occasion for the grand jury has gone. I like the proposition of the gentleman from Nemaha (Judge Thomas). I have yet to find a State that once abolished the grand jury which desired to go back to it. I do not know precisely the Michigan system, but we can study it.

Mr. MAXWELL. Mr. Chairman, It has been contended that this grand jury system might be sustained without giving the Legislature power to modify it in any manner. Now, Mr. Chairman, my friend, the gentleman from Douglas (Mr. Myers) states that they have not had any riots in Pennsylvania where this system prevails. I think the gentleman has not been reading the papers lately, for there have been several riots within the past six months.

Mr. MYERS. Will the gentleman permit me to explain.

Mr. MAXWELL. Certainly.

Mr. MYERS. Those riots did not arise from anything over which the courts had jurisdiction.

Mr. MAXWELL. I did not know riots were graded. If a person violates the law he is liable to come under the law. We all remember the whiskey riot there, a number of years ago; also quite a number within the last fifty years. Now, it does seem to me, Mr. Chairman, that a system which is ex parte, and does not try to get at the facts is a system to be deprecated in a free government. No man ought to be accused on a mere suspicion. What is the grand jury based upon? The State only seeks what will make out the case for the State. All the evidence that is required is simply that which accuses the prisoner. Is it not better to have some system defined whereby you can examine into the merits when the prisoner can have a chance to show that he is not guilty. I think you can safely leave this matter in the hands of the Legislature. I would adopt a system of allowing the judge to draw a jury if he sees fit, would not the State of Michigan have repealed this law if it did not work well there? With the grand jury system, any sneak can go before the grand jury and bring injury and trouble upon any one with whom he had had a difficulty. This is done frequently. I say if there is no other objection to the system but that, that is sufficient to condemn it. My friend from Douglas says that no district attorney will have backbone enough to do his duty, if he has no grand jury to back him up. Then the district attorneys should be removed and men of nerve put in their places. Now it is contended that if the grand jury is abolished, riots and lynch law will prevail. I ask you if the leaders in riots and lynch law have ever been prosecuted. I say that the gentleman cannot state a single instance where these men have been prosecuted by the grand jury. I will say that before our being admitted as a state, that—we had but little use for grand juries in our county. The first court that convened in Cass county, after we became a State found about forty indictments and every one of those were quashed, the next grand jury found about sixty indictments, I think every one of these were quashed. The prosecuting attorney we had at that time was a man who was disposed to make all he could out of the position. My friend here, Mr. Kirkpatrick, was foreman of the grand jury, and the prosecuting attorney urged the grand jury to find indictments, each indictment representing $5.00 and perhaps perhaps forty or fifty dollars would be made by quashing. I trust we will give power to our Legislature to suppress this great nuisance.

Mr. LAKE. Mr. Chairman, During the past four years I have been more intimately connected with grand juries than before. I agree with my colleague from Douglas (Mr. Wakeley) as to the benefits of the grand jury system. It also has its draw backs. It has features I like and features I don't like. In my experience, I have about come to the conclusion that the expenses and the draw backs of the grand jury system are not repaid by the benefits. I think that in ninety nine cases out of a hundred there is no earthly use of calling a grand jury; but I would not like to sweep the system away at one stroke, but hope we may place it in such shape in our Constitution, that the system will be abolished gradually, if it is thought better to do so; trying its abolition in certain cases, and if found to work well, then adopt the system which exists in Michigan. We do not hear that the people of that state wish to return to the old tracks, but their system seems to work well. We all know that the system of grand juries in our circuit courts is so expensive that the taxpayers almost dread to have the grand jury called, and they also dislike to be called from their homes and their business to serve on grand juries, and then we know there are thousands of cases which come before grand juries, where there are ex parte examinations. It might be well to have the matter so that the Supreme court would be empowered to call a grand jury if there seemed to be any necessity for it. If it is proposed to make some responsible person swear that the individual accused is guilty of a crime, then there is something to work upon—something tangible, and upon the first accusation the accused is ready to meet the charge and refute it if he is not guilty. Many and many cases I have known in which accusations of this kind were made, witnesses having merely gone before the grand jury without any real case, and charged individuals with high criminal offences. Several states have abolished the grand jury system, and finding that they are satisfied will it not be well for us to try the experiment? There is no more difficulty in charging an individual with a crime upon the statement of a responsible person who is willing to swear thereto than there is in doing it through the agency of a grand jury, and there is no more difficulty in having a fair and impartial trial and in justice being done than in leaving the matter to a grand jury, which listens to one side only. Let us try the experiment. Let us leave the matter to the good judgment of the Legislature. If they see fit upon full consideration of the subject to dispense, either in full or in part, with grand juries I for one am in favor of doing so.

Mr. ROBINSON. Mr. Chairman, I don't suppose I will be able to add anything to what has been said upon this question. I hope the amendment will prevail. The system of grand juries grew up in the dark ages, and it is the work of barbarism. The time for the use of this kind of machinery in our courts, has passed, and the system should be done away with. This amendment leaves it in the wisdom of the Legislature to abolish or keep it. Nearly all the criminal cases that are now tried are first begun by a prosecution before an examining magistrate and if that is the case, it certainly cannot be argued here that prosecutions cannot be openly done, for if they have the courage to go before a magistrate with the grand jury system in existence they will do it without it, and that will certainly be the system adopted instead of this. I think we ought all to be willing to trust this to the work of our Legislature, as the people are willing to trust to our hands. Their work can be undone, our work cannot be undone.

Mr. PHILPOTT. Mr. Chairman, I wish to add only a word more. There are many counties in this state which are attached to other counties for judicial purposes. I have now a case before me where a man has committed a crime in one county which is so attached, and he cannot be tried until an indictment is first found by a grand jury of the county where the crime has been committed, and he is compelled to lay incarcerated in prison until such jury can be had. I do think it would be proper for the safety of society and the interest of the accused if he could be sent to some other county where a court is in session, without the intervention of a grand jury and there be tried.

Mr. MASON. Mr. Chairman, in considering the subject before us it deserves perhaps a careful investigation and it is unsafe in my judgment to cut loose from the safe moorings of the past, unless some good reason can be offered for so doing. Now under the bill as at present framed the Legislature may abolish the grand jury system in every class of cases, except treason and crimes punishable by imprisonment in the penitentiary. Ought this Convention in removing, or wiping out an institution, that has so long done so much to protect the rights of the public? My recollection is not that it was inaugurated by the common people to secure to them the power to prosecute the balance, but as a barrier to stand between them and Kingly authority. It was saying to the King, you shall send no power to arrest or imprison us until we have been indicted of crime by a jury of our own country. Now, Mr. Chairman, let us consider the ultimate end to be attained, it is to establish a competent accuser of him who has been guilty of crime. How often has it occurred here in the West where wealth and power have such a strong influence over men, that a man will be willing to speak in the chamber of the grand jury, but he stands powerless before the presence of the wealthy and influential criminal? It seems to me it is dangerous for competent reasons, to cut loose upon the wild sea of uncertainty, and trust ourselves to the sea of fashion that swells over the Legislative halls. I desire to call attention to the objection urged by my worthy friend from Cass (Mr. Kirkpatrick) when he said that he knew a case where the prosecuting attorney was anxious that the grand jury should put a person through and the grand jury refused to do it. How often is this the case that the grand jury has stood between an innocent citizen and wrong accusation to protect him from the power in the hands of the prosecuting attorney? I say that it is against the spirit of our free institutions to put this power in the hands of one man. It is worth while to bear in mind the best portion of the Lord's prayer "lead us not into temptation," and sir, to clothe any one man with such power to accuse and arraign our fellow citizens is dangerous to our civil liberties.

My democratic friends and my republican friends, do you propose to put this power in the hands of one individual, when it is said to be unsafe in the hands of sixteen? It seems to me these considerations should lead us to consider whether we should go any further than this bill already does in this question. It is said it is safe to trust this in the hands of the Legislature. Pray what did the people send us here for, if it was not to stand up as barriers to the Legislative and other departments? Why sir, if these things were safe, you need no Constitutional convention.

It seems to me this is begging the whole question. But, Mr. Chairman, there are objections to my mind most serious, deep rooted, implanted in the very nature of human existence why this institution should not be eradicated in the establishment of government. First, never place in one man the power which ought to be exercised by 16 of 23. It is dangerous; he might otherwise be a good man, but when tempted with so much there is no knowing at what hour he may fall. Peter withstood temptation a while, but he denied his Master at the last. So when you place in the hands of one prosecutor the power of accusing any and every citizen, it is a dangerous investment of power; he will wieid an influence over your county, especially in the class of cases preceding an election, dangerous to the whole social fabric, and might wrap the whole house in a flame and cause utter ruin. And, sir, all these things are no fancy pictures. Why, sir, the experience of the gentleman from Douglas (Mr. Myers) formerly from Pennsylvania, when he reads the experience of the State of Pennsylvania and her great legal lights with their learning, he finds a strong argument in favor of leaving the salutary power where it now is. And, sir, is it not most astonishing that in the very centers of legal learning, indeed, where we may say society has been crystalised, and the very fountain of progression and the exercise of legal authority, not one of these old and great states has cut loose from these safe moorings. Not one gentleman can tell me just how far any of these new States have gone, not one of these is able to add the experience of a single year to the authority of his arguments, to which I have addressed myself, not one has been able to produce the report of the judiciary for it, of a single State, as to its workings. Then what are we to do, you propose to cut loose from one of the fundamental institutions of the country, that, I undertake to say, has not been less salutary in the exercise of its influence, and not less useful in its application to society here in free America, than it has been in Monarchial Europe. What do you do when you do this? Simply inaugurate the law of France as it stands to day and as it stood before the revolution, nothing more, nothing less, and the prosecutor may send out his writ to arrest any citizen of this land. You are putting a dangerous power in the hands of this prosecutor, and gentlemen of this Convention, I beseech you, in the language of my friend from Douglas (Mr. Wakeley), to pause and consider before you cut loose from this old ship and its safe moorings, that has banished crime, and purified and elevated society in more instances than one. No human institution can be perfect, no institution of government can be perfect in all its workings. I do not oppose the amendment because of my dissatisfaction with the offspring of progress and law, I am in favor of every useful application of the principle of change, I must first see that no great danger is to happen to civil society from this change, and Mr. Chairman from these reasons I hope the amendment proposed by the gentleman from Nemaha (Mr. Thomas) will not prevail.

Mr. MAJORS. Mr. Chairman, I have been listening with interest to the discussions that have proceeded from this question, and I confess that when the gentleman from Otoe commenced his argument in opposition to the amendment, and after he stated that the principle and history of the organization of this right of a grand jury to first sit upon every case, was brought about in order to prevent power from controlling the feeble citizen, but that in order that the citizen demanded it to prevent the power of the law, and he argued it upon this line, condemning the reading of others that took a different view, and in the line of his argument he based his effort upon the fact of protection against power. He stated to my mind, that to repeat this, no individual would be able to withstand the monied influence and the man of power in his neighborhood and bring him to justice. If the gentleman's position is correct it is certainly wrong. I do not subscribe to all the argument and reason of the gentleman in his conclusions in favor of the grand jury system. To my mind, Mr. Chairman, it is simply that the accused may enter his belief in the defense of the crimes charged in that bill of indictment, that being the only object for which the grand jury is empanelled, and that grand jury dependent upon the information of a witness brought before them, whose feelings and whose knowledge alone they rest their indictment upon. Why not allow the individual witness who appears before the grand jury to go before the proper tribunal, and there upon his own information, backed up by his own oath, set forth the bill of particulars against the accused, then and there allow the accused to go and confront him and enter his defense? I find some objections, in my observations and experience, in the history of this system of indictments, I have known myself many cases in which the guilty party has been notified of the action of the community in this direction, has left the country and escaped punishment thereby. It seems to me in these latter days in its workings, rather than to secure and bring a criminal to justice, it only drives and runs criminals from one State to another. The secrecy of the grand jury room seems to have been removed, and when a criminal is moved against in that direction by some means or another he finds out the workings of that jury and has timely notice that he is not needed any longer in this part of the country. It seems to me it is a useless expense and works no good at all to the community, therefore I am certainly opposed to the system as it is now inaugurated in our system of jurisprudence. Again, the gentleman from Otoe (Mr. Mason) does not believe in giving the Legislature power to change the system. If it is right and proper to trust the interests of these smaller offences, if a citizen guilty of something inferior to that of another, who has been more aggravated in his wrongs and acts, why take more care of the grave offenders by the benefits of the grand jury? I think if there is any virtue in this position it should be extended to all alike, I think the power can be safely invested with the Legislature to determine this matter. Notwithstanding we are members of a Constitutional Convention, we are subject to law as well as legislators. I do not think transfering us from the Legislator's seat to that of a seat in the Convention makes us better men than before, and I am entirely willing to trust this matter in the hands, and wisdom, experience of the past and views of the future, with the Legislature that may represent the people directly. Therefore I shall favor the adoption of the amendment and shall vote heartily for it and hope to see it carried.

Mr. MANDERSON. Mr. Chairman, I propose to take up the time of the Convention but a few moments on this question, but as the discussion has appeared to develop itself into a relation of experience on this matter of grand juries, I propose to give a little of mine in the State of Ohio. I had the honor to serve for a few years in the capacity of prosecuting attorney and in that position of course it was within the line of my duty to attend upon grand juries. Now, Mr. Chairman, unless I am widely mistaken of the duty of a grand jury, they have a larger and a greater duty to perform than that suggested by the gentleman last up. He appears to think their duty is confined to the mere dressing up of complaints, that the grand jury is merely to throw around the information, that legal verbiage common in indictments. Why not so, their duty is greater than this. They not only find bills, but they ignore bills; and in that part of their duty lies very largely the liberty and rights of the citizen. We were told by the gentleman last up, that one of the objections to the grand jury system is that owing to the fact that no oath is required from men jurors, criminals escape during their investigation or enquiry before the grand jury. Now, this is a matter in the control of the Legislature. If we retain the grand jury system there is nothing to prevent us from placing an oath to prescribe that any grand juror keeps secret all that occurs. I can add little upon the necessity of keeping this system of grand juries. I believe the experience of all men who have watched the deliberations of grand juries, is convincing of the fact that they are, as a rule, honest, and will not err. We are told that if it is proper that infamous crimes like treason or murder, and offences punishable by imprisonment in the penitentiary should pass through the grand juries' hands, that it applies with as much force to minor offences. Inferior crimes seldom deprive a citizen of his liberty. Upon information had before an examining magistrate, as a general rule, by himself or through a jury, passes upon the guilt or innocence of the accused and affixes the penalty. If it is an offence of a higher grade, it goes before the grand jury and inquest is had. Inferior crimes too, are bailable, and the figures are within the reach of most. We are told this is an expensive system. It seems to me we ought not to weigh dollars and cents against the liberty and safety of citizens. But, I say it is not an expensive system; and it seems to me the gentleman from Douglas struck the right nail on the head when he said that the grand jury, acting under its oath and within the line of its duty, kept out of our courts and from petit juries many frivolous cases that would otherwise go to them. A, desiring to inflict some punishment, perhaps on B, to secure vengeance or satisfy his malice goes to the prosecuting attorney, and says "Mr. Prosecutor, B has been guilty of such an offence, I am ready to make my complaint, and demand you to do your duty." The prosecuting attorney, it is proposed, shall usurp the province of the grand jury to a certain extent. He draws up the information, it is subscribed to, the oath made, and a warrant issued for the arrest of B. What would be the course before the grand jury in Ohio? It is required that the prosecuting attorney shall cause to appear, where the party has been bound over, all the witnesses examined before the authority that bound over. The grand jury have not only the oath and statement of the prosecuting witnesses, but he must bring all the witnesses by whom he expects to make his case and prove B guilty of the crime charged. It seems to me the gentlemen in the Convention are Supreme judges, and I am loath to give to the Legislature the right to take away this privilege, which rightfully belongs to the citizens.

Mr. SPRAGUE. It strikes me this is a very important matter, and we should not act hastily. And as one item strikes my mind which has not yet been spoken upon I wish to refer to it. Having had, in this State, some five or six years experience as a prosecutor, and it having been my duty during that time, to appear before the grand jury and see the operation of this matter before them. I have frequently seen cases of this kind occur, and it might be well for us to consider whether they will not occur in the future. There is, upon the part of the witness, a disposition not to appear, even before the grand jury; and from the organization of the grand jury, coming from different portions of the county, they were sworn and a jury empanelled to enquire into the commission of the offences, of any that might come within their knowledge. It is supposed they know of all crimes committed within their county; and when the oath is taken they are required to send for all witnesses. I have known grand juries compelled to remain in session for two or three days, when witnesses have tried to keep out of the reach of the officers. Now, if there is no person or authority to compel these witnesses to come before them, how shall we get them there in cases of this kind? It strikes me that in this thing alone it is important. It will cause offenders to be brought to justice in cases of this kind who never will be brought in any other way.

Mr. MYERS. I do not wish to detain the Committee by any lengthy observations on this subject, as it has been so ably and thoroughly discussed by the gentleman from Otoe (Mr. Mason) in whose opinion I entirely concur, and who has delivered a good argument in favor of this subject, the best argument. The grand jury system runs through our whole form of government. It is one of the foundation stones of our Republican institutions; and it is the foundation stone of Republican institutions in England. It ran through the legislative departments of the Congress of the United States, and all other States of this Union. The Legislature of every State and the lower House of Congress is a grand jury when it prefers articles of impeachment against State officers for misdemeanor. How would it appear in State trials, where the grand jury prevails, in preferring these articles of impeachment, for an individual, or his own motion, where there is no attorney general, no judge, no power to investigate into the probable causes of allegation, to appear in the presence of the Senate, and make allegations of misdemeanors of office, without being sustained? What a ridiculous position he would occupy in an event of that kind! But the laws, the organic laws, provide that allegations of this kind should be presented to the House of Representatives. Each acts in the capacity of a grand jury; and from its own investigation or its own knowledge, they frame articles of impeachment or indictment against those who have proved faithless to their obligations to the State. I hope the argument of the gentleman from Otoe will convince this Convention of the danger of abolishing the grand jury. It is true we have crushed kingly power in the United States, and this is the only power in the world which has done so; but there are other powers as insidious and powerful as a monarchy which require to be moved. There are individuals who will crush out individual rights of the citizen, therefore I want this bulwark of liberty, this foundation stone of our early fathers, who contended for that right before King John, preserved; I want that we should continue this custom in our State, notwithstanding that a few grown States have undermined it. I stand here, upon the Rock of Ages, which has been practiced in glorious Pennsylvania, and help to keep this guard of liberty thrown around the rights of private citizens. I hope this Convention will not commit an act of suicide or felo de se in this case; but show to civilized nations that we will go governed by their system.

Mr. STRICKLAND. Mr. Chairman, I have only a few words to say. I have had some little experience in this matter, having for four or five years past been a public prosecutor, and I have observed the workings of this thing. The arguments used to-day by my friend Myers and the gentleman from Otoe (Mr. Mason) were used to continue and uphold the idea that a man could be shackled and deprived of his liberty —the same ideas and the same high sounding eloquent words. If there is anything which is tainted with barbarism, it is this secret tribunal called "grand jury." When the gentlemen talk about one man, the prosecuting attorney, having so much power, they seem to forget that this same power is exercised by the grand jury, and the difference is this, the grand jury exercise their power in secret, while by the method proposed by those opposed to the grand jury system, this power is exercised in the open day, and the evidence is discussed and charges made in open court, and not in this Star Chamber of secrecy. Why look at the working of the grand jury room. The business is all done in secret. No man can enter the door without he is a prosecutor. Suppose A is charged with a crime; he has five witnesses to disprove the charge, but the court instructs the grand jury "you will receive no witnesses for the defense." No witnesses to explain, or justify. No sir, but the informer sneaks in by a back door, and makes his charges, and the true honest man is not allowed to come in with his five witnesses and disprove the charges made by a sneak and a coward. The accusations upon which this man must stand a trial are made upon the information given by this sneak, who steps in by a back door. Is it possible this great country is to-day submitting to this? I don't wonder that gentlemen who have seen so much of it, condemn the whole system. If any man upon earth has reason to cry out against the system, it is the honest , upright judge who has seen its workings, and I am glad to see my colleague, Judge Lake take the ground he does. By the method proposed as a substitute for the grand jury, some responsible citizen makes complaint against the individual in open daylight, and then if the accusation is untrue, he can be contradicted.

My friend, General Manderson, spoke about "frivolous cases." That is where they come in and little dirty frivolous cases. There is the place to spend all the gall and venom which some men possess. A great many cases of this character are brought before the grand jury, and the little dirty hate and spite are so easily seen, that the Judge sitting upon the bench, or the District Attorney, quashes the whole thing. Often an indictment is found against an honest upright man, who, for months perhaps writhes in the agony of being the object of unjust suspicion, while the fellow who has done this, walks about the street in the image of his Maker, when he should have hoofs and horns. I have seen so much of this, gentlemen. How is it when a man's name is presented upon an indictment? Guilty! Guilty! Says the world, until he is placed upon trial and declared innocent by the traverse jury. What is there, I ask in the name of Heaven, in a Republican government which necessitates this secret action?

Why not open the doors and windows to the whole world, and let witnesses testify for an old friend and neighbor, and if there be an extenuating circumstance, let it appear? But no sir, this is not done. This entire system is wrong, and should be made right. If the laws of your state are defective, correct them. It is urged that District Attorneys would be afraid to do their duty if they were not backed by a grand jury. I don't believe it. For the four years I have done the business of United States Attorney, I have prosecuted charges made against individuals, when I believed them to be correct, as a public prosecutor should. When a public prosecutor has not the nerve to do this, let him skulk to the rear. This is the way cases should be conducted. A complaint is made before an examining magistrate, the magistrate hears both sides, and if he finds the evidence sufficient to commit, he commits, and the individual is brought before the court for trial. The Prosecuting Attorney draws up a complaint embodying the law and describing the offense. Now how simple that is, and it is all done in open court. In conclusion I beg pardon for taking up so much time. But what a simple thing it is to dispose of cases without all of this secrecy. And there is a great deal of expense and disappointment connected with this system. Very often a witness does not want to testify. How many times, in the United States Courts, witnesses run away. Now look around for your volanted witnesses when the hour comes, and they are not to be found, they are gone—gone to California, or Pike's Peak, and then your District Attorney says "we have no case and a nolle" is the consequence.

But, gentlemen, over and above all these considerations are the rights of persons to be faced by their accusers. I will state outside of that that the grand jury entails upon this State one third of the expense of the country, yes sir, one third.

Mr. CAMPBELL. Mr. Chairman, I would like to have every member on this floor give his reasons for or against this Article. I will give the reason in brief why I am not in favor of the Article. The arguments urged reminds me of the fable about the assemblage of beasts to consult how to destroy man, because he kept them from killing one another. Just so they come up and want to do away with this system, because it keeps men from killing each other.

The prosecuting attorney is generally some little petifogging jack-leg of a lawyer in some of the counties, and they dare not bring an accusation against my friend General Estabrook who stands six feet in his boots not only literally but intellectually too. Let us stand by the good old system.

Mr. WILSON. I did not intend to say anything on this subject. I am sorry to disagree with my friend from Nemaha. If I wanted counsel he would be the first man that I would go to. I knew a case of a man who had an interest of $2,700 in an estate, and others combined together and said let us send that man to the penitentiary and we shall easier secure the $2,700. The father and son came sneaking into the grand jury room to swear away the liberty of that man unknown to him. I saw at a glance what they were after, with others of the jury, and we refused to find a bill against him. For that reason I made up my mind if ever it was in my power to put down this grand jury system, I would labor night and day for it.

Mr. WAKELEY. Mr. Chairman, after the extended debate on this question it may be proper that I should have something more to add. I am glad that the discussion has been had. I have risen mainly to reply to the gentleman from Douglas (Mr. Strickland) who has been, from his own experience as a United States prosecuting attorney of the State of Nebraska, surrounded with crime and felony, but not with moral and good conduct. Who is it in the land who fears this secret inquisition sir?. It is the murderers, the felon. The man whose evil crimes have been concealed, and whose acts are being inquired into, it is the man who fears the law and justice. The good citizen of the State of Nebraska does not fear it, I do not fear it, you do not fear it: the gentleman who has denounced this system as an inquisition does not fear it. But sir, the men who would have it abolished are the men who assault the lives, property and persons of our fellow citizens. Sir, the gentleman tells you that men sneak into the grand jury room and prefer complaints, and upon ex parte evidence these indictments are found, and that these complaints are found to be baseless. If this system is to be abolished, in whom is this power to be vested? Will the gentleman say to this Convention that the public prosecutor is a safer power than the grand jury? Would it be safer for him as a public prosecutor to say that a man is guilty of a crime than to leave it to a grand jury of the different citizens of Nebraska? Two things are to be made out, one is that all men, who ever commit crime, shall be put on trial for it, the other is that men shall not be unjustly accused. Has not the gentleman observed that one of the main duties of the grand jury is to protect the innocent from unjust accusation? He says, I believe correctly, when he says that very frequently crimes have been committed and no complaints have been made before examining magistrates, and sir, grand juries are empanelled just to reach such cases; when they come together they are charged as one of their duties to inquire into all crime that they know of having been committed in their county, that the guilty may be punished. Over and over again does it happen that crimes which have not yet been prosecuted are brought to the cognizance of a grand jury, indictments framed, the accused put on trial, convicted and punished. It is objected that that the grand jury is a secret tribunal; this Constitution will not consider it a secret tribunal. It has been, and will be, in the power of this State, if they think public justice will be subserved, to order that the accused may be heard in his own defense before the grand jury. My friend, General Manderson, says it is the law of Ohio, that when crime is for the first time presented to a grand jury that they should send off and notify the accused that an accusation had been made at their bar and required him to come there with his witnesses in his defense, would you not thereby defeat one of the great objects to a grand jury?

Mr. CAMPBELL. I would like to enquire whether they can send for witnesses.

Mr. WAKELEY. They can, sir, and they are told over and over again from benches of this State, if in their investigations they have reason to believe that other witnesses than those produced before them by the prosecutor can throw light on the case, it is their duty to send for them. Against all these arguments I say this, I prefer to trust a jury of 16 men, good men and true coming from all portions of the county or district, sworn to be true and just, sworn to present no man from hatred, envy or malice, sworn to present no man from fear, favor or hope of reward, than I would trust any prosecutor, I do not care whether in courts of the United States, or of this State. I say there is more safety to the citizens, more safety to persons and property, when this body of men are charged with a special duty of enquiring into crime, than when it is left to a prosecutor who has, to some extent, the life, liberty and property of its citizens in the hollow of his hand. I would trust 12 men where I would not trust one man. Talk of men being unjustly accused, in my humble judgment, in all I have seen, I say a great many more innocent men would be accused of crime, paraded in the face of the world as villians, if you left to any one man, I care not how wise or pure he may be, if you left that power to him, than when it takes 12 men acting upon their oaths to accuse one of their fellow citizens. The people of this State, of other States where I have lived, have not complained of the action of grand juries; whenever they had occasion to complain of venom and malice, it has been against other instruments of law than grand juries. I sir, believe, it is the good citizens of the land who uphold grand juries. I believe it would be the criminals of the land who would be glad to see it abolished, and who would feel safer if it were abolished. "No rogue e're felt the halter draw with good opinion of the law."

What does the experience of this country teach? My colleague from Pennsylvania (Mr. Myers) has suggested what all our reading and knowledge and experience has taught us. It is in the good old States where grand juries have prevailed from the beginning of government, it is in Massachusetts, the New England States, the old Empire State and the grand Keystone State, that criminals are most frequently brought to light when there is difficulty in convicting them. I have never heard any gentleman claim that more criminals were accused or convicted in States where this system had been dispensed with, than in those old States where they have proved it in its original strength and intact.

Mr. Chairman, I do not care to trouble this Committee with further remarks upon this subject, I have no other interest than every member here or every citizen of the State has.

Mr. STRICKLAND. May I ask a question? (to Mr. Wakeley) do you remember the charge of Judge Dundy on three several last courts, that the grand jury were to examine no witness for the defense?

Mr. WAKELEY. I do not know what Judge Dundy's charge has been. If he has instructed the grand jury what their duty is, he has told them, not that the accused could come there, that his witness be heard, but that so far as the investigations made by them and disclosures made before them, lead them to believe or suppose that light would be thrown upon the investigation by summoning other witnesses than those brought before them at the instance of the prosecution, it was their right and duty to bring those witnesses and hear their testimony.

Mr. STRICKLAND. I will state that there is a statute of the United States, that compels the United States court to adopt the practice of the State in which it sits.

Mr. LAKE. Mr. Chairman, I wish to say but a word more. I am glad this discussion has taken place, that we may know the views of the gentlemen representing the different portions of the State. I have listened in vain for any argument, why the system of grand juries should be continued. We have heard it referred to as being of immense benefit in ancient times, in other days, but not one argument as I apprehend advanced in favor of continuing it at this time. We should not forget that it is not the intention, it is not the object of this amendment to the section now under consideration to abolish the system of grand juries; that is not the intention, it is to leave it to the experience of the Legislature of the State hereafter to determine whether or not it be best. If a broad proposition were presented here to day to wipe out irrevocably the system of grand juries, I would oppose it, because if it were wiped out in this manner, then it could not be reclaimed, it would be the end of it, but it is only proposed to leave it to the experience of the Legislature, that if, in their good judgment it be found best, by a gradual abolition, by modifying it from time to time and finally dispense with it entirely, the Legislature may do so; there is nothing imperative about it.

The argument has proceeded as though the fate, though the fortunes of a person accused of crimes was to be placed entirely in the hands of the prosecutor. Not so, it is to be left to Legislative provision; the Legislature are to provide if they think best some other mode of accusing persons who may be suspected of crime. It may be that they will throw other safeguards around the mode of accusation, safeguards which will be entirely adequate. Of course safeguards should be provided. Responsible persons should be required to make the accusations, but these are arguments which will be more properly addressed to a Legislative assembly, met for the purpose of considering what substitute should be provided for this ancient and dishonorable system. We are not here for the purpose, so far as this proposed amendment is concerned, to provide what shall be or may be done, we are simply proposing that the Legislature may in their good judgment, provide some other system of accusation, if they see fit not to do it then this provision, this system of grand juries will be continued. It is already provided in this article, in this section, that the grand jury may be abolished in petty offences, in cases of minor crime. Now it has been found to work well in that class of cases.

If further experiment shall demonstrate that in cases punishable by imprisonment in the penitentiary, that the grand jury may be dispensed with, then why not dispense with it? The experience of a year will not hurt us. It is not so dangerous a distinction that it will work prejudicial to the State to leave it to an experiment of one year. If it be found to work disadvantageously, then at the next session of the Legislature that act may be repealed, and the system of grand juries, as provided for here, will remain a part of the Constitution. It is only leaving it to the good judgment of the State, the representatives of the people, who are as capable to judge of this matter as we, and who are as responsible and answerable to their constituents as we, to judge for themselves and represent the wishes of the State in that regard. Shall we say to the people of the State they shall not exercise this right? It is a question to be determined here today. It is not saying to the people, "you shall not have a grand jury system," but "you may have it if you desire it." And is there a gentleman upon this floor who is unwilling to trust the people to determine this question for themselves? We do not propose to engraft upon this Constitution a provision which irrevocably disposes of the grand jury system of the country. We do not feel like laying sacrilegious hands upon this great bulwark of British liberty. Reference has been made by several gentlemen to the hardships that work by reason of the present system. I have known many of them myself. The gentleman from Lancaster (Mr. Philpott) referred to a case where there had been probably not enough disinterested men, or were not a year ago, at the time the crime was committed in the county of Hamilton, to decide upon the case. That jury would be willing to have an accusation made against him if it could be done, and he would ask that a change of venue be made to some other county, and he would be willing to waive his trial, but the State cannot do this without the intervention of the grand jury. The proceeding of the court would be nullity. He cannot be proceeded against except through the intervention of a grand jury, and he must lie in jail and await the action of the authorities of the county for the calling of the court; and if there are not a necessary number of men to be found, he must be in jail until, through the instrumentality of the tide of immigration that is now going on, a sufficient number of men may be found to form a grand jury. It was said this system should be retained in order that combinations of men might not thwart the law. How was it recently in the northern portion of the State? Why, sir, men have been taken and by their fellows in the open day, and on the Christian Sabbath, and fresh from the Christian church, these fellows have gone forth and hanged a victim to the nearest tree, without Judge or jury; and when the court has been called together and the grand jury instructed that if such and such had been done and was done, the result was that no indictments were found, notwithstanding that the thing was done in open day. Who was overawed? The courts or the grand jury? It will not do to urge these exceptional cases against any system. I do not urge that as a reason why the grand jury system should be abolished, but for the purpose of showing that while the public prosecutor may be overawed, grand juries may be overawed in such a manner as to lead them to fail in a proper discharge of their duty. If these are the only reasons to be urged against the system I would not urge the favorable consideration of this amendment. But I say the benefits which accrue to the State; to the individual charged with the crime, do not begin to weigh down in the scale as against the evils and expense and other considerations which may be urged against the system with its disadvantages. And therefore, I trust the tenor of this amendment will not be lost sight of; that we shall bear in mind it is not a proposition to abolish, permanently, the grand jury system, but leaving it entirely to the people, as a safe repository where that power may be safely left; and if their experience, hereafter, shall prove it is not wise to abolish it they shall retain it on the statute books. It has been said that grand juries were bound to call in witnesses for the defense in the criminal court. It is not competent for the grand jury to call for witnesses for the defense, but only for the prosecution. It has been said it is a "star chamber" practice. It was a secret tribunal until recently. It is said the Legislature may provide how accusations shall be made against one charged with or suspected of crime; what responsible person shall make the accusations; what the form shall be, and what chances will accrue to the accused. All these are left to the Legislature, and it is safe to leave it there. Let us, at least, give the people of the State a chance to try the experiment.

Mr. STRICKLAND. For the information of my colleague (Judge Wakeley), and my friend Dr. Campbell, of Otoe, I will read from the Revised Statutes, page 636:

> Sec. 194. In all complaints exhibited before the grand jury of any county, they shall hear the witness on behalf of the territory only, and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, when at least two witnesses to the same fact shall be necessary; and in finding a bill of indictment, at least twelve of the grand jury shall be present, and at least twelve of them shall agree to the findings: The foreman of the grand jury may swear or affirm all witnesses that may come before the jury.

I think this is the law of the land now.

Mr. MASON. I desire briefly to expose some of the plans urged by the gentleman last on the floor. It is said that the man in Hamilton county is willing that accusation be made against him, but that there are not sixteen men in the county but have expressed an opinion. If that be true, and there be sixteen men in the county, you have only to get those sixteen men together, and although each of these may have expressed an opinion, yet if he does not object to any of them they may bring up the indictment, and he take the change of venue and secure a trial at once. But we are told it is not abolishing the grand jury system, but simply giving the Legislature the power of abolishing it. We are sent here to take from the Legislature all power to inveigle, and invest them with power to do good. Now, the question is, which is the safest repository, the power to abuse, one man or sixteen? And I desire to challenge the attention of my friend from Johnson to the case he put. If they had no prosecutor and that witness had come in and made his case, do not you think that would have been a prosecution swearing; and was it not a fact that you had sixteen good men on that jury, who saved that man from prosecution? And is not this a sound reason why this institution should not be abolished? It is strange this thing should pass before my mind at this time. Now, Mr. Chairman, when a change in a law is sought, it remains for those desiring this change to show the benifits which will accrue therefrom. It has been stated here by one of the opponents of the grand jury system, that one third of the expenses of our State government was caused by this system. I was surprised that the gentleman from Douglas (Mr. Strickland) should make this assertion, which cannot be sustained. It has been urged, too, that men come before this "Star Chamber" and make accusations against their honest neighbors. Now if you select sixteen capable, upright men to serve as a jury, is it likely that an innocent man will suffer, or is it probable that one public prosecutor will be more humane, more pure, or better qualified to discharge this duty? If a sneaking witness is to come in at a back door and testify against a neighbor is it not reasonable to suppose that he will influence one man more than he can influence sixteen? Answer me this. Mr. Chairman, before I go any further, will you read the amendment?

The CHAIRMAN. (reading) "Provided, that the Legislature may provide for the trial of criminal offences in all cases, without the intervention of a grand jury."

Mr. MASON. Now if this amendment shall prevail, the Legislature have no right to reinstate that grand jury, although it may be found that the arrangement substituted therefor is sapping the very life of the State. In this case the Legislature has a special power given it, and, having exercised that power, its action cannot be revoked. Its power in this direction is gone forever, this, gentlemen, is one of the sophistries which I desire to explain, you vest a particular power to do a particular thing to the Legislature, and the exercise of that power precludes the possibility of doing any other thing in that direction.

Mr. LAKE. Do I understand the gentleman to say that the Legislature cannot repeal an act when it has once passed it?

Mr. MASON. You understand me to say that when the Legislature is directed by this Constitution to do a particular thing, they cannot undo it after having done it. In support of this theory I might quote a work on "Constitutional Limitations". The gentleman from Douglas (Mr. Wakeley) has stated some of the advantages of the grand jury system, most truthfully. Its uses in the past, its advantages to society entitle it to respectful consideration. We might cite a long age of British history to show that six hundred years experience in that country has sanctioned this system. Take the gentleman from Douglas (Mr. Strickland) who spoke with so much feeling on this subject—take his argument and what ideas has he advanced? I ask you Mr. Chairman, and every gentleman of this Committee, if a witness can fool and deceive a jury of sixteen men as easily as he could a single prosecutor; or, take the other position; if a witness deceives sixteen men, could he not deceive some other institution that the Legislature might provide. Oh! gentlemen, let us look this thing in the eye. We propose to give to three men in this State power to act in the place of sixteen men drawn from each county, and who are to take cognizance of the crimes committed in those counties. I say where will you deposit the power to make accusations—where is the man to whom this power can be entrusted? If you go to the grand jury room and select sixteen good, true men and entrust the power of making accusations to them you are leaving the business in safe hands. I have no feeling in this matter, except that caused by a desire to make safe provision for my children and neighbors, in this respect. I believe, as the gentleman from Douglas, Judge Wakeley has said, that the experience of six hundred years has shown the grand jury to be the safe repositor of this power to make accusations, and I for one intend to use my influence against the innovation urged. Let me ask each individual member of this Convention—let me ask the gentleman who spoke so feelingly—is there any more danger of twelve honest men finding you guilty of a crime, than there is of one man, who perchance, is elected public prosecutor? Who is the most infallible, one man, or twelve? In the one case, in the language of Thomas Jefferson, you "are going to import a man to accuse you" would you bring a man from Otoe county to accuse the people of Lincoln? Under the grand jury system, accusations are made by sixteen men who are taken from your midst—men who know you and all your affairs. They are your neighbors and friends, while under the arrangement proposed, you are to be accused of crime by a single man who knows nothing at all about you, but is perhaps an entire stranger. Mr. Chairman, my only excuse for occupying so much of your time must be, that I feel this is a dangerous innovation. I am not satisfied to commit the interests and the liberty of my own children and my own neighbors to the tender mercies of a prosecutor coming from another county. I had rather trust them to sixteen men taken from the hallowed precincts of my home. This power to accuse, in the language of the gentleman from Douglas (Mr. Wakeley) I had rather trust to sixteen of my neighbors, than to any man that the President may appoint, the Governor may appoint, or the people elect. It is simply a question as to wherein you will repose this power. Let us adhere to the good old customs of the past. In this, we will find security, safety and peace in the future, as we have found in the past.

Mr. WOOLWORTH. Mr. Chairman, I move that the Committee do now arise, report progress, and ask leave to sit again.

The Committee divided and the motion was agreed to.

Mr. GRIGGS. Mr. President. The Committee of the Whole have had under consideration the Bill of Rights, and have instructed me to report progress and ask leave to sit again.

Mr. MYERS. Mr. President, I move that this Convention do now adjourn, to meet to-morrow morning at 9 o'clock.

Mr. MANDERSON. Mr. President, I move that when we adjourn tomorrow, that we adjourn to meet on Tuesday, July 11th, at 2 o'clock p. m.

The motion was agreed to.

Mr. MYERS. Mr. President, I renew my motion to adjourn until tomorrow morning.

The motion was agreed to.

So the Convention (at six o'clock and five minutes) adjourned.

FIFTEENTH DAY.

Friday, June 30th, 1871.

The Convention was called to order at nine o'clock, by the President.

Prayer.

Prayer was offered by the Chaplain to the Convention, Rev. L. B. Fifield, as follows:

Oh Father, God of Heaven and earth, this Convention would acknowledge Thy hand in the good tidings that have come from beyond the sea—the tidings of this great victory of Peace. God bless the President of the United States and all the citizens of the Republic. God bless the British Queen and all her subjects. And now, Oh Father, guide, we beseech Thee, the counsels of the morning, may truth be sought by the Convention, that the people may be made glad; that our freedom may be established; that the State may become very strong. Amen.

Reading of the Journal.

The PRESIDENT. The reading of the Journal will be dispensed with for the present. The Secretary has not got it quite ready.

Communications.

Mr. ESTABROOK. Mr. President, Here are two communications which I would like to have read.

The Secretary read as follows:

Land Office,
Dacota City, Nebraska.
June 26, 1871.

His Excellency
Wm. H. James,
Act. Governor.

Dear Sir:

In reply to your communication of the 22d inst., I have the honor to submit the following statement:

Sometime in the months of October and November, A. D. 1870, Abram Deyo, an agent for the State, came to my office with a list of lands he had personally examined, and from which he informed me he intended to make selections in the name of the State of Nebraska, for Agricultural College purposes. Mr. Deyo remarked that he was not prepared to make the final selection of those lands and asked me to designate in some way, on the Government Platts, the vacant lands contained in his list and to retain them for a time, or until he could return to Lincoln and confer with the Governor, and then he would send me a list of approved selections. I designated those lands by the letter "S" in pencil on the plats, and in that way set apart ninety six thousand acres of land, on Mr. Deyo's list, which, he remarked, was twenty-five or thirty thousand more acres than he would likely wish to select in this district.

After waiting four or five months, and receiving no list of selections, nor any formal application for the lands, I did not feel justified in longer withholding these lands from private entry, but when parties applied for them, I invariably told them the situation of the lands. I have not thought, and do not now think, that the State acquired any right to these lands nor title in them by the action of the agent, neither do I think Mr. Deyo thought so himself. There still remains vacant of those lands examined by Mr. Deyo, eighty four thousand acres which is more than the State Agent expected to take from this District.

I did not intend to jeopardize the interests of the State, and do not think the lands remaining of Mr. Deyo's list less valuable than those taken.

Hoping this explanation will be satisfactory, I remain,

Very respectfully,
Your obedient servant,
GEORGE W. WILKINSON,
Register U. S. Land Office, Dakota,
Nebraska.

Treasurer's Office, Cass County, Nebraska.

Plattsmouth, Neb., June 28, 1871.

E. ESTABROOK,

Dear Sir:—In reply to a request from the Committee on Education, I would say that it would, at the present time, be impossible for me to get up such a statement as you want. The county clerk made out a full statement last winter for the Auditor, which you will find in his office. I have sent full reports of all money coming to my hands to the Auditor and Treasurer.

All moneys received here has been sent to the State Treasurer.

It would take me two weeks steady work to get up a report that you want, at a cost of about Fifty dollars, which I am not able to pay. The report in the Auditor's office is, I think, all that is necessary.

Yours respectfully,
W. L. HOBBS.

Mr. ESTABROOK. Mr. President, I ask that those communications be referred to the Committee on Education and School Lands, that they may be embodied in their report.

Mr. WOOLWORTH. Before this is done, Mr. President, I would like to ask whether this Cass county Treasurer is one of the number of county Treasurers who have been spoken of here as not having made proper returns to the State Treasurer.

Mr. KIRKPATRICK. I would state, Mr. President, that he is not included in that number. I know that full reports with regard to the school lands have been sent in from that office. The sales in our county amount to over $100,000. That is the amount for which the land has been sold and the required 10% and the interest has been paid.

Mr. ESTABROOK. I would state that the Committee to whom the resolution was referred making these inquiries, are preparing a little circular to send to the different county Treasurers asking first: whether they have sold any school lands, second; what amount of money they have received, and whether it has been transmitted to the Treasurer of the State, and if so, whether vouchers have been received by the Treasurers of the counties.

This communication coming from the Treasurer of Cass county was received in answer to such a communication from this Committee, and it looks to me rather suspicious; I think if the Treasurer had kept his books right he could make out a report very easily.

Mr. KIRKPATRICK. Mr. President, I do not understand that the Treasurer is to keep an account of the lands sold, he keeps an account of the monies received. I know it is the duty of the county clerk to keep a record of the amount of land sold. The Treasurer now responds that all of the money received by him has been paid into the State Treasury. There is a condensed statement of this sent in here and he refers to that statement on file in the Auditor's office.

Mr. McCANN. Mr. President, I move that this matter be referred to the Committee on Education and School Lands.

The motion was agreed to.

Unfinished Business of the Previous Day.

The Secretary read a resolution offered by Mr. Scofield, as follows:

WHEREAS: It is of the utmost importance to the safety of every State that it should always be in a condition of defense, and it is the duty of every man who enjoys the protection of society, to be prepared and willing to defend it, therefore,

RESOLVED: That the militia of this State at all times hereafter, as well in peace as in war, shall be armed and disciplined and in readiness for service. That all such of the inhabitants of this State who, from scruples of conscience, may be averse to the bearing of arms be excused therefrom by the Legislature, and be required to pay to the State such sums of money in lieu of their personal services, as the same may, in the judgment of the Legislature, be worth; and that a proper magazine of warlike stores proportionate to the number of inhabitants be forever hereafter, at the expense of this State, established and maintained at such place within the State as the Legislature may designate by law.

Mr. SCOFIELD. Mr. President, I move that the resolution be referred to the Committee on Military Affairs.

The motion was agreed to.

Incidental Expenses.

The PRESIDENT. A little bill presented here to the Secretary for expenses.

The Convention will have to pass upon it.

The Secretary read the bill as follows:

Lincoln, June 30, 1871.

State of Nebraska to S. Cooper, Dr. To 1510 pounds of ice furnished for the use of the Constitutional Convention. $15.00.

Received payment,
S. COOPER.
Approved June 30. 1871.
WM. H. JAMES,
Secretary of State.

Mr. MAJORS. I move that the account be allowed.

The motion was agreed to.

Resolutions.

Mr. BOYD. Mr. President, I have a resolution I wish to offer.

The Secretary read the resolution as follows:

RESOLVED: That the Register and Receiver of the Dacotah land district, be and are hereby requested to with-hold from private entry, all lands selected as Agricultural College lands, in the manner indicated in this communication, until the agent of the State shall have an opportunity to perfect such selections.

Mr. PRICE. I understand by this communication that there is eighty four thousand acres remaining yet of the selection not entered. I move the adoption of the resolution and that the clerk be requested to transmit a copy of it.

Mr. MASON. I would ask if the clerk there has any power to do this?

Mr. ESTABROOK. It will appear that he has from his offer.

Mr. SPEICE. Mr. President, It seems to me that a request of this kind would be putting this Convention in a very awkward position. If these are government lands, I do not see how the register of the land office can refuse to allow any man the privilege of making an entry or filing. If they are not government lands , if they already belong to the State, then there is no necessity for action of this character on the part of this body. If I was persuaded that action of this kind on the part of this body would save to the State 84,000 acres of land, although it might be a little work. I think it would be wise for us to take such action; but I cannot see how we are going to save these lands to the State if they are really government lands.

Mr. McCANN. Mr. President, The land officers at the Dacota office have been doing only what they were instructed to do long since by the department. These lands have been selected and checked off on their plats, and by circular addressed to the different land offices of this State, it became the duty of these officers to hold those lands. It is true these officers have been expecting to receive fees, that was under a misapprehension of the law; they are not entitled to fees for lands selected for Agricultural College purposes, it is so expressly provided, that they shall receive fees in all cases except lands for Agricultural College purposes. They have been performing that duty for a year past, and I trust they will perform that duty until not only the 84,000 acres are secured to the State, but 90,000 acres to which we are entitled.

Mr. CAMPBELL. There seems to be a misapprehension in this matter. The State appropriated money to pay for the selection of these lands. Now, I would like to know what is the right state of this matter. It seems that the officers declare they will save these lands if the land office fees are paid. This register and receiver throw the responsibility on the State officers; the State officers throw it on the Legislature, that they did not pay for it, the land officers say the State officers had not selected them, nor taken the proper steps to have them selected. I would like to find out who is in the wrong in this matter.

Mr. McCANN. Mr. President, It is true, as my colleague (Mr. Campbell) stated, that the last Legislature appropriated 2,500 dollars to pay these fees, but the last Legislature were laboring under the impression that these fees had been paid, in order to secure these lands to the State. That was not and is not true. That appropriation has not been disbursed by the Auditor and Treasurer, and I am assured by the Auditor that no warrant on that fund will be drawn now, as we have already before this Convention, the statement of the proper authorities, that these selections were made, and as I said before, have been checked off on the plats in that district, and no one of these selections ought even to have been entered by any other party. This Convention has already communicated the steps necessary to secure these lands to the State and I hope this resolution will pass, that we may omit the performance of no one duty, or the taking of any step necessary to secure these lands to the Agricultural College fund. We can do nothing more, we are not a Legislative body, and if we were, with this knowledge before us, we would not appropriate a cent to secure lands which are already ours, without the payment of any fee whatever.

Mr. SPEICE. I would enquire whether a resolution did not pass here offered by the gentleman from Douglas (Mr. Boyd), to the effect that this body made enquiry in regard to these same lands this resolution pertains to. If the resolution passed, what has become of it?

Mr. ESTABROOK. That resolution was offered by me and not Mr. Boyd.

Mr. SPEICE. I would enquire if that resolution does not meet the whole case.

Mr. ESTABROOK. Oh, no. That was merely precautionary.

The PRESIDENT. The question is on the adoption of the resolution.

The motion was agreed to.

Newspapers.

Mr. WILSON. I move that the Secretary be instructed to have our newspapers stopped from the time we adjourn until the 11th of July.

Mr. GRENELL. I believe it has been customary to stop papers, they no doubt know we adjourn.

The motion was agreed to.

Adjournment.

Mr. MYERS. Mr. President, I move that we do now adjourn.

The ayes and nays were demanded.

The Secretary called the roll and the President announced the result. ["Ayes" 26, "nays" 20, as follows:]

AYES—26

Ballard,
Campbell,
Curtis,
Eaton,
Estabrook,
Gibbs,
Granger,
Griggs,
Hascall,
Kenaston,
Kilburn,
McCann,
Mason,
Myers,
Neligh,
Newsom,
Price,
Robinson,
Scofield,
Shaff,
Speice,
Stevenson,
Thummel,
Thomas,
Tisdel,
Wilson,

NAYS—20

Abbott,
Boyd,
Cassell,
Grenell,
Griggs,
Hinman,
Kirkpatrick,
Lake,
Ley,
Lyon,
Majors,
Manderson,
Maxwell,
Moore,
Philpott,
Reynolds,
Sprague,
Vifquain,
Wakeley,
Woolworth,

ABSENT OR NOT VOTING.

Parchen,
Parker,
Stewart,
Towle,
Weaver,

And the Convention (at nine o'clock and forty-five minutes) adjourned.

SIXTEENTH DAY.

Tuesday, July 11th, 1871.

The Convention met at 2 o'clock P. M.

Prayer.

Prayer was offered by the Chaplain, as follows:

O Thou, the Great Preserver of State and of men, we thank Thee for the good providence that gives to us the privileges of this day. We thank Thee for this new year of our Nation's life. May it be a year of abounding prosperity in all that gives sound and healthful growth; even a year of triumph for religion, liberty and law, through Jesus Christ our Lord. Amen.

Leave of Absence.

Mr. HINMAN asked leave of absence for Mr. Abbott, in consequence of sickness.

Mr. REYNOLDS asked leave of absence for Mr. Parker, for the remainder of the week.

The PRESIDENT asked leave of absence for Mr. Grenell.

Communications.

The Secretary read the following communications:

Department of the Interior,
General Land Office,
Washington, D. C.,
January 29, 1871.

L. L. Holbrook, Esq.,
Secty. Neb. Const. Convention,
Lincoln, Neb.

Sir.—

Referring to yours of 22d inst., relative to State selections for Agric. Colleges in Dakota City Land Dist.

I reply that I have this day directed the land offices to report the selections to this office and make no further disposition of the lands.

Very respectfully,
WILLIS DRUMMOND,
Commissioner.

Department of the Interior,
Washington, D. C.,
June 28th, 1871.

Sir.—

I am directed by the Secretary of the Interior to acknowledge the receipt of your lettter of the 22d instant inclosing report of Committee on Education, etc., and to inform you that the same has, with the inclosure, been referred to the Commissioner of the General Land Office.

Very respectfully, your
obedient servant,
J. L. DELANO,
Chief Clerk.

L. L. Holbrook, Esq.,
Secy. Neb. Constitutional Convention, Lincoln, Nebraska.

Unfinished Business.

The Secretary read the following resolution:

RESOLVED: That the Convention do now proceed to the election of an enrolling and engrossing clerk, who shall do such duties as shall be prescribed by the President.

Mr. MAXWELL. I think it is unnecessary yet to proceed to make such appointments. I do not think there is anything for an engrossing clerk to do. We do not need such a person until an article is completed.

Mr. ESTABROOK. As I understood it this resolution was superseded by another resolution, by virtue of which the President was empowered to employ what clerical labor he thought necessary.

The PRESIDENT. It was postponed and now comes up in its order.

Mr. KIRKPATRICK. I understood this matter was disposed of by authority granted to the President by the Convention, to employ the necessary clerical assistance.

Mr. CAMPBELL. That certainly was my understanding.

Mr. ESTABROOK. To dispose of this matter, I move that it be laid on the table.

Motion agreed to NEM. CON.

Reports of Committees.

Mr. ESTABROOK. I would like to state that I have received a large number of communications, in response to the circular we sent out to the different Treasurers, and I desire to meet the Committee on Education, School Funds and Lands immediately on the adjournment of the Convention this afternoon.

The PRESIDENT. The report of the Committee on Education, School Funds and Lands will be read by its title, unless some gentleman desires it read.

The Secretary reads "Report of the Committee on Education, School Funds and Lands."

The PRESIDENT. First reading of the Report.

The Secretary reads the report again by title.

The PRESIDENT. Second reading of the report.

Mr. ESTABROOK. Mr. President, unless some gentleman will suggest something that may be profitable, I move that we adjourn in order that the Committees may go to work and be ready to go on with the work tomorrow morning.

Mr. HASCALL. We have plenty

of work to do. I find my desk full of reports of Committees, all wanting to be acted upon. I think after resting ten or twelve days we should be ready to go to work at once, I am opposed to the adjournment.

Mr. GRAY. Mr. President. I move that we go into Committee of the Whole upon the report of the Committee on Schools.

The PRESIDENT. Gentlemen, you hear the motion of the gentleman from Dodge—to go into the Committee of the Whole upon the report of the Committee on Education, School Funds and Lands.

The Convention divided and the motion was agreed to.

So the Convention went into Committee of the Whole, Mr. Stewart in the Chair.

The CHAIRMAN. Gentlemen of the Committee, you have before you the report of the Committee on Education, School Funds and Lands.

Mr. NEWSOM. Mr. Chairman, this report has come into my possession within the last hour, and I have had no time to consider it. I believe the report of the Committee was not printed until after the adjournment; therefore, I move the Committee rise, report progress, and ask leave to sit again.

Mr. ESTABROOK. Mr. Chairman, I think the report might be read over now by the Secretary. We will gain some knowledge of it in that way.

Mr. NEWSOM. Mr. Chairman, I withdraw my motion.

The Secretary read the report as follows:

Report of the Committee on Education, School Funds and Lands.

By E. ESTABROOK,
Chairman.

Mr. President:

Section 1. The educational and school funds and lands of this State, shall be under the control and management of the Legislature.

Sec. 2. All lands, money or other property granted or bequeathed, or in any manner conveyed to this State for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance.

Sec. 3. The following are hereby declared to be perpetual funds for common school purposes, of which the annual interest or income only can be appropriated, to wit:

First, Such per centum as has been or may hereafter be granted by Congress on the sale of lands in this State.

Second, All moneys arising from the sale or leasing of the sixteenth and thirty-sixth sections in each township of this State, and the lands selected, or that may be selected, in lieu thereof.

Third, The proceeds of all lands that have been or may hereafter be granted to this State where, by the terms and conditions of such grant, the same are not to be otherwise appropriated.

Fourth, The net proceeds of lands and other property and effects, that may accrue to the State by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of desceased persons.

Fifth, All moneys, stocks, bonds, lands and other property now belonging to the common school fund.

Sixth, All other grants, gifts and devises that have been or may hereafter be made to this State, and not otherwise appropriated by the terms of the grant, gift or devise, the interest of which said funds, together with all rents of unsold school lands, and such other means as the Legislature may provide, shall be exclusively applied to the following objects, to wit:

(1.) To the support and maintenance of common schools in each school district in the State, and the purchase of suitable libraries and apparatus therefor.

(2.) Any residue of such funds shall be appropriated to the support and maintenance of academies and normal schools, and schools of an intermediate grade between the common schools and the University, and the purchase of suitable libraries and apparatus therefor.

Sec. 4. The Legislature shall require by law that every child of sufficient mental and physical ability, between the ages of six and sixteen years, unless educated by other means , shall attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law, and may establish schools for the safe keeping, education, employment and reformation of all children of such age who are destitute of proper parental care, or who are growing up in mendicancy, ignorance, idleness or vice, which schools shall constitute a part of the system of common schools.

Sec. 5. The Legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition, to all children between the ages of five and twenty-one years. .

Sec. 6. Provision shall be made by law for the equal distribution of the income of the fund set apart for the support of common schools, among the several school districts of the State, in some just proportion to the number of children and youth resident therein between the ages of five and twenty-one years, and no appropriation shall be made from said fund to any district for the year in which a school shall not be maintained at least three months.

Sec. 7. No University lands, Agricultural College lands, common school lands, or other lands which are now held or which hereafter may be acquired by the State for educational purposes, shall be sold for less than seven dollars per acre.

Sec. 8. All funds belonging to the State for educational purposes, the interest and income whereof only are to be used, shall be deemed trust funds held by the State as trustee, and the State shall supply all losses thereof that may in any manner occur, so that the same shall remain forever inviolate and undiminished; and such funds, with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transferred to any other fund for other use.

Sec. 9. The location of the University and Agricultural College at the Capital of the State, as already established by existing laws, is hereby sanctioned and confirmed, and said institution is hereby declared to be the University and Agricultural College of this state; Provided, that other Agricultural Colleges and experimental farms may be established by the Legislature when the wants of the people may so require.

Sec. 10. Schools for the benefit of the deaf, dumb or blind shall be fostered and supported.

Sec. 11. The superintendent of public instruction, secretary of state, treasurer and attorney general shall constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds, in such manner as may be provided by law. The superintendent of public instruction shall be the presiding officer of the board. Any three members shall constitute a quorum. Such board shall also have the general management and control of the affairs of the state normal schools, and the state university and agricultural college, and shall take the place and do the duties of regents of said institutions. Such board shall also have the general supervision of public instruction in the state.

Sec. 12. No sectarian instruction shall be allowed in any school or institution supported by the public funds set apart for educational purposes.

Mr. NEWSOM. Mr. Chairman, I renew my motion that the Convention rise, report progress and ask leave to sit again.

Motion agreed to.

Mr. STEWART. Mr. President, The Committee of the Whole have had under consideration the report of the Committee on Education, School Funds and Lands, and have instructed me to report progress and ask leave to sit again.

Mr. McCANN. Mr. President, I move that the Convention do now adjourn until to-morrow morning at 9 o'clock.

Mr. CAMPBELL. Mr. President, I think it would be better to make this report the special order of business for 9 o'clock to-morrow morning.

Mr. HASCALL. Mr. President, I hope this report will not be made the special order of business at our hour of meeting, because I think it is our duty to take up the reports we have already been acting upon.

Mr. CAMPBELL. Mr. President, The Chairman of the Committee on Bill of Rights will not be here until Wednesday or Thursday.

The PRESIDENT. The question is on the motion to adjourn until 9 o'clock to-morrow.

Mr. CASSELL. Mr. President, I move to amend until 10 o'clock.

Mr. McCANN. I wish to remind the gentleman that it is time for us to go to work. I don't object to the adjournment of this afternoon but I do think we should meet at 9 o'clock.

Mr. WEAVER. I move to amend by saying 8 o'clock instead of 10.

The PRESIDENT. The question is on the motion of Mr. Weaver, to adjourn until 8 o'clock.

Mr. ESTABROOK. Mr. President, I rise to a point of order. The longest time must be put first.

The PRESIDENT. The question is upon the motion of the gentleman from Lancaster (Mr. Cassell) to adjourn until to-morrow morning at 10 o'clock.

The motion was not agreed to.

The PRESIDENT. The question is on the motion to adjourn until 9 o'clock.

The Convention divided and the motion was agreed to.

So the Convention (at two o'clock and thirty-three minutes) adjourned.

SEVENTEENTH DAY.

Wednesday, July 12th, 1871.

The Convention met at nine o'clock, and was called to order by the President.

Prayer.

Prayer was offered by the Chaplain, Rev. L. B. Fifield, as follows:

Most high mighty and merciful One; bless us this day; deliver us from evil; make us wise unto truth. Permit not that we feed upon ashes.

Show unto us the bread of life. Grant peace to our people, even peace and safety to all the people, we pray. Amen.

Leave of Absence.

Mr. PHILPOTT. Mr. President, I ask leave of absence for Mr. Robinson and Mr. Cassell until to-morrow morning. Leave granted.

Mr. CAMPBELL. Mr. President, I ask leave of absence for Mr. Mason until to-morrow morning.

Leave granted.

Mr. WILSON. Mr. President, I ask leave of absence for Mr. Eaton until to-morrow morning.

Leave granted.

Reading of the Journal.

The journal of last day was read and approved.

Report of Standing Committee.

Mr. ESTABROOK. Mr. President, the Committee on Education have a report, which will be presented by one of the members of that Committee—General Vifquain.

The Secretary read the report, as follows:

PRESIDENT CONSTITUTIONAL CONVENTION.

Sir:

Your Committee on Education and School Lands has the honor to report that after comparing the returns of several County Treasurers with the report made to this Convention by the State Auditor, we find that in seven counties, the difference against the Auditor's report is to the amount 1,498 acres, at an average price of $8.16 per acre, or $12,253.68 against the school fund; and taking this as an average of the little mistakes that have been made, the school fund so far, including sales made previous to 1871 only, should be short of 8,700 acres, or not less than $70,000; furthermore the interest paid on the sales on school lands during 1867, 1868, 1869, and 1870, as reported by the Auditor amounts to $106,839.61; when taking it all together from the first sales made up to Jan. 1st, 1871, it should amount to at least $250,000.00, making again a little difference of about $149,000 against the school fund. We are unable to find where the mistakes are made, and we earnestly suggest that this Convention will so secure the funds, so as to prevent any further oversights.

We will also report that the amount of school lands in the State, will approximate just about 3,000,000 acres of land.

Submitted by,
VICTOR VIFQUAIN.

Appendix.

In Douglas county difference against the school fund acres 120; Burt county, difference, acres 980; Cedar county, difference, acres 820; Hall county, difference in favor of Auditor, acres 2169; Colfax county they agree, Dacota county, against the State, acres 360; Washington county, in favor of Auditor, acres 860.

Mr. ESTABROOK. Mr. President, I presume that report will be printed.

The PRESIDENT. No objection being made the usual number of copies will be ordered printed.

Resolutions.

Mr. VIFQUAIN. Mr. President, I offer a resolution.

The Secretary read the resolution, as follows:

RESOLVED: That this Convention take pleasure in granting the privilege of this floor to General John M. Thayer.

Mr. VIFQUAIN. Mr. President, I move the adoption of the resolution.

Motion agreed to.

Committee of the Whole.

Mr. McCANN. Mr. President, I move that this Convention now resolve itself into Committee of the Whole, for the purpose of considering the report of the Committee on Education.

Motion agreed to.

So the Convention went into Committee of the Whole, with Mr. Stewart in the Chair.

The CHAIRMAN. Gentlemen of the Convention; we have now under consideration the report of the Committee on Education. The report has been read by the Secretary, and is now ready to be considered by sections. The Secretary will read the first section.

The first section is read by the Secretary as follows:

Sec. 1. The Educational and School Funds and Lands of this State, shall be under the control and management of the Legislature.

The CHAIRMAN. Gentlemen, what shall be done with the section? If there is no objection it will be considered adopted—It is adopted. The Secretary will read the second section?

The Secretary read the second section as follows:

Sec. 2. All lands, money or other property granted or bequeathed, or in any manner conveyed to this State for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest, or conveyance.

Mr. NEWSOM. I desire to amend that section. My object is this; I do not believe it is the purpose of this Convention or any member of it to advocate sectarian ideas, and I believe, under the provisions of that section, it may be possible to make the State the educator of sectarian views. "All lands, money or other property granted or bequeathed, or in any manner conveyed to this State for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest, or conveyance." That is the way the section reads. I believe it will be possible that a sect should grant to the State money to be used in a specific way, and I take it for granted the State would become the agent of this party, for the education of children for certain denominations. I do not believe it was the intention of the Committee to make this mistake. I move to strike out the words "or in any manner conveyed to this State, for educational purposes.".

Mr. ESTABROOK. Mr. Chairman, I would call the attention of the gentleman to section 12 of this report, which reads—

Mr. NEWSOM. Section 12 fixes this matter so far as public funds are concerned, but it does not apply to money conveyed to the State.

Mr. HASCALL. Mr. Chairman, the objection the gentleman raised to the section could be obviated by striking out the latter part of the section so that it would read as follows: "Shall be used and expended" for that purpose.

Mr. ESTABROOK. It strikes me, Mr. Chairman, that is just exactly what it says now. "All lands, money or other property granted or bequeathed, or in any manner conveyed to this State for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance." It is only when conveyed for educational purposes that the section applies; and then the grant is to be employed for that purpose.

Mr. HASCALL. Mr. Chairman, I do not understand that it would mean the same; there might be conditions in the grant that the State might ignore if the words "terms of such grant bequest or conveyance" were stricken out.

Mr. ESTABROOK. Let me inquire of my colleague (Mr. Hascall) if he does not think the 12th section does not fully guard against this objection?

Mr. HASCALL. My attention had not been directed to that section until now. I believe it does.

Mr. NEWSOM. I move Mr. Chairman, to strike out the second section and insert my amendment as a substitute.

Mr. KIRKPATRICK. How would the amendment read?

The Secretary read the substitute as follows:

> All lands, moneys, or other property donated, granted or received for school, college, seminary or university purposes. and the proceeds thereof shall be faithfully applied to the objects for which such gifts or grants were made.

Mr. NEWSOM. The difficulty in my mind is that the section might make the State the instrument for the education of sectarian views. For instance, a Presbyterian may desire to bequeath his property for the education of the children of the land in Presbyterian views. He, under this section, bequeathes his property to the State, and by that the State becomes the agent of such sectarian education. My object is to allow a man to bequeath his property as he chooses; but do not let us make the State the educator of sectarian views.

Mr. McCANN. Mr. Chairman, I can hardly conceive of a case arising that will meet the objection of my colleague (Mr. Newsom,) we have in this State, as in other States, different denominational colleges, such as Baptists, Congregationalists, and etc., I do not believe that such bequests as that referred to would be made to the State but that they would be made to the denominational institutions. I have no fear of such bequests being made in the history of our State, or of this Constitution at least. We know that such bequests are frequently made, but they are invariably made to the denomination represented, and not to the State. I like the section as it is. I have no objection to the gentleman's amendment, but I do not believe it is necessary. If the State accepts, it should be applied for the purposes for which it is bequeathed.

Mr. SPRAGUE. Mr. Chairman, I cannot for the life of me see any difference between the section as it stands and the amendment proposed. If the State accepts a bequest it must accept it for the purpose made, and the State can only apply it for that purpose. Hence I see no object in adopting the substitute.

Mr. TOWLE. I would ask the gentleman from Otoe (Mr. Newsom) if that substitute is not almost the same language as that in the section?

Mr. NEWSOM. No sir. The section provides that money may be bequeathed or conveyed to the State, and so make the State a party in carrying out sectarian views; but the amendment does not make the State a party.

Mr. TOWLE. Mr. President. I cannot see much difference between the section as it now stands and the the section offered by the gentleman from Otoe (Mr. Newsom), but it appears to me that the section should stand as reported by the Committee. The language as it is in this section 2, and as used by the Committee may not go far enough; may not reach and cover ground enough; yet if specific bequests are made they will stand under the general laws, and can be applied and used only according to the specific terms of the bequest, will or conveyance which makes a grant to any religion, or any school association. It was suggested by the gentleman from Otoe (Mr. McCann,) it is usual and customary in all cases where individuals desire to bequeath money to religious denominations, to bequeath it directly and specifically to them, they having corporate existence, having trust deeds; and the executors or other representatives of that person's estate, if they find out, or it comes to their knowledge that the exact terms are not being carried out, it can be stopped. I understand this, where money is to be bequeathed to the State University, where it shall be given to any other State Institution, agricultural college, or other universities that may be established hereafter, when money is given to one, it can be applied only to that college and cannot be turned into any other fund. For instance, in our own university, if some individual should die wealthy and should be desirous of bequeathing a sum of money for the law part of the university, the object is, that that money could not be applied to the building up of any professorship, excepting the professorship of law. We find in other States that money is left for enlarging one individual branch of different colleges; placing them in a position where they can compete with other colleges, in medicine, law or any other knowledge. I take it that the section should stand; that it was placed in there for that very identical and specific purpose—that where an individual had his heart and soul set upon it, and granting to a certain university a corps of professors, if he wished to stimulate the growth of any one certain branch of knowledge in this State—it should be carried out in that direction and in that particular, and should be charged to no other particular whatever. And if the State is not in a condition, or if the amount is not sufficient, and it shall revert back to the original donor, or be allowed to accumulate until it is sufficient to accomplish the purpose desired, it only tells to the State and Legislature that this individual is anxious that for this specific purpose this money should go; and that the Legislature should not have power to divert it in any other direction, than was the will and wish of the man who gives the money for this purpose. I think this section should stand. I believe the section should stand to guard irrevocably the intention of the will of the person who has bequeathed property.

Mr. HASCALL. Mr. President, I believe this amendment should be adopted entire, to guard the State against sectarian schools. I shall vote in favor of the amendment because I believe the language of the proposed amendment is better and clearer and will place the matter in a better light than the original report. In referring to the Illinois Constitution under the head of education, I find the proposed amendment is an exact copy of section two, which reads "all lands, moneys or other property, donated, granted or received for school, college, seminary or university purposes, and the proceeds thereof, shall be faithfully applied to the objects for which such gifts or grants were made". If that section is adopted there can be no debate as to the intention of the Constitution upon the point. The only objection that seems to apply to this section, as reported, is this, "that it shall be expended in accordance with the terms of such grant, bequest or conveyance." There might be conditions or terms attached to the grant, that if this section remained here, would leave the argument that the donors might claim should be carried out to the letter, and it might be repugnant to the intention and spirit of the Constitution, therefore I see no objection to substitute the proposed amendment for the section as reported, and that leaves it without any doubt as to its meaning or effect.

Mr. KIRKPATRICK. I like the substitute of the gentleman better than the original provision. and after all, I am not sure that either of them are right. If I understand the matter I suppose the intention of section two is that the objects of the donor should be carried out rigidly according to the terms made.

Mr. ESTABROOK. If any thing better can be offered than any section, I hope it will be adopted, because what I desire is to get the very best schools that can be conceived. This report covers the entire ground and is more comprehensive in its terms. Moreover, it seems to me, it covers much more ground in less words, because in the terms of the Article proposed, which has been copied, and it seems we cannot get on without the Ill. Constitution—that which has been copied from the Illinois Constitution, confines the application exclusively to certain kinds of grants or bequests. It does not cover the entire ground of all conveyances made for additional purposes as does the second section, but speaks only of such grants or bequests as may have been made for certain specific objects. "Section 2. All lands, moneys or other property granted or bequeathed, or in any manner conveyed to this State for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance." It seems as though it covered all kinds of education. Is it not more elegant? Is it not neater phraseology? The only difference I can see is "and the proceeds thereof shall be faithfully applied to the objects, etc." It says it shall be used in accordance with the terms of such grant. Are we going to tinker up this Article without any substantial reason? One portion is made and dovetailed into the other, and subsequent portions are made with respect to former portions. It seems to me that all to be desired is accomplished by this. It provides that all land and money bequeathed shall be applied in accordance with the terms of the grant. You cannot take university grants for agricultural college purposes, nor agricultural college money for common schools. Under this an individual may make a bequest of land or other property for the benefit of the deaf and dumb. It provides simply that the fund bestowed should be expended for the uses and purposes of the education of the deaf and dumb, not agricultural college nor common schools; simply for the purpose named in the grant. This is accomplished here. The gentleman from Otoe (Mr. Newsom) seems to be in great fear and apprehension that some sort of sectarian instruction can be imparted under the provision of this Article. If a man makes a bequest and the State receives it, it is received in accordance with the terms of the Constitution and under it it would be impossible, so the courts would determine. The State cannot receive a grant that can be used for any kind of sectarian purpose, because the last section of the Article says not. If a man wishes to make a bequest for a sectarian purpose, it should be made to the sect, under the provision. The State could not use it.

Mr. MAXWELL. Mr. Chairman, In reading the second and third sections it seems to me there is more language used than is necessary. It could have been conveyed better in one section; and I offer this substitute for both sections:

> The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the State for educational purposes, and the proceeds of all lands or other property given by individuals or appropriated by the State for like purposes shall be and remain a perpetual fund, the interest and income of which together with the rents of all such lands as may remain unsold, shall be inviolately appropriated and annually applied to the specific objects of the original gift, grant or appropriation.

The CHAIRMAN. We have not arrived at the third section yet.

Mr. MAXWELL. But I have the right to make a motion embracing the two in one.

The CHAIRMAN. Perhaps the gentleman from Otoe (Mr. Newsom) will accept this amendment.

The Secretary read the amendment of Mr. Maxwell again.

Mr. NEWSOM. If the gentleman from Cass (Mr. Maxwell) will withdraw his amendment for a moment I will withdraw mine, and offer this instead:

> All lands, money or other property granted or bequeathed for educational purposes shall be used and expended in accordance with the terms of such grant, bequest or conveyance. Provided, the State shall not receive any lands, money or other property for sectarian purposes.

Mr. MAXWELL. I am willing that a provision of that kind be inserted in the Constitution, but I think this is not the proper place to do that. We are now providing for who shall be custodians of the school funds. In the proper place I will favor the amendment of my friend from Otoe (Mr. Newsom.)

Mr. ESTABROOK. Will the gentleman from Cass (Mr. Maxwell) allow me to call his attention to section eight, and ask him if the ground is not essentially covered?

Mr. MAXWELL. I understand that in preparing the Constitution we are preparing a code of principles, and there is danger in embracing too much. Now, this substitute I offer covers the ground, and provides what shall be done with funds and other property. Section two and three reads and its subdivisions read thus:

Sec. 2. All lands, money or other property granted or bequeathed, or in any manner conveyed to this State for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance.

Sec. 3. The following are hereby declared to be perpetual funds for common school purposes, of which the annual interest or income only can be appropriated, to-wit:

First, such per centum as has or may hereafter be granted by Congress on the sale of lands in this State.

Second, All moneys arising from the sale or leasing of the sixteenth and thirty-sixth sections in each township of this State, and the lands selected, or that may be selected, in lieu thereof.

Third, The proceeds of all lands that have been or may hereafter be granted to this State where, by the terms and conditions of such grant, the same are not to be otherwise appropriated.

Fourth, The net proceeds of lands and other property and effects, that may accrue to the State by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons.

Fifth, All moneys, stocks, bonds, lands and other property now belonging to the common school fund.

Sixth, All other grants, gifts and devises that have been or may hereafter be made to this State, and not otherwise appropriated by the terms of the grant, gift or devise, the interest of which said funds, together with all rents of the unsold school lands, and such other means as the Legislature may provide, shall be exclusively applied to the following objects, to-wit:

(1.) To the support and maintenance of common schools in each school district in the State, and the purchase of suitable libraries and apparatus therefor.

(2.) Any residue of such funds shall be appropriated to the support and maintenance of academies and normal schools, and schools of an intermediate grade, between the common schools and the University, and the purchase of suitable libraries and apparatus therefor.

Now I submit, Mr. Chairman, that that language is too broad. What does this mean? Any residue of such funds which may be appropriated "to the support and maintenance of common schools in each school district in the State and the purchase of suitable libraries and apparatus therefor." This land is granted for the purpose, as we suppose, of maintaining common schools. The State holds the funds, and causes them to be distributed throughout the State. Now, this goes on, and after providing for this says "any residue." What residue? Where is the dividing line? "To the support and maintenance of academies and normal schools, and schools of an intermediate grade between the common schools and the university, and the purchase of suitable libraries and apparatus therefor." It might, instead of making the Constitution clear make it so as to be misunderstood. I think the amendment is short, and fully covers the ground. There is no mistaking its language.

Mr. ESTABROOK. Let me ask the gentleman supposing a grant is made where the terms are not specified, but simply in general terms?

Mr. MAXWELL. A grant made to any particular fund?

Mr. ESTABROOK. No particular fund or there is no heir to take a distributive share?

Mr. MAXWELL. I submit that in all cases of that kind the Constitution should provide what shall be done with the property that reverts to the State, and what would be done in case a grant was made to the State but to no particular fund. But if the grant be made to a particular fund then the grant or gift is to be applied to that particular fund.

Mr. ESTABROOK. The gentleman will see, by sub-division three of section three, provision is made there; and he proposes to blot all that out, and makes no provision for this, whereas it is made in sub-division three.

Mr. MAXWELL. I would propose to provide for this in an independent section. We are providing now simply for what shall be done with the proceeds of the property held by the State. It seems to me these two sections may be united in one, and the language be better, and thus avoid repetition.

Mr. NEWSOM. I have no objection, Mr. Chairman, to the idea presented by the gentleman from Cass (Mr. Maxwell); but I do not think he goes far enough. I think the provisions of the bill, in other respects do better than his substitute for my amendment. I have no objection to the manner in which it is presented except that I maintain you cannot make the State a party to a sectarian object. And that was the object of my amendment. I cannot see any objection, particularly, to the amendment of the gentleman from Cass, but I do not think it covers the bill as is is reported by the committee; and I cannot accept the amendment.

Mr. LAKE. Mr. Chairman, I have listened to the objections which have been made to the several sections which have been under discussion and have listened with the intention of adopting that which appears to be an improvement upon sections two and three. But I must say they fall far short of coming up to the requirements of the Constitutional provision we all desire to have engrafted in the Constitution. It seems to me the Article, as it now stands, is symmetrical and expressive, by the words which have been employed, and covers the entire ground. What can be better than this language: "Sec. 2. All lands, money or other property granted or bequeathed, or in any manner conveyed to this State for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance." Now I think we might tinker at this section as long as we see fit, and fail to improve upon that language. It includes every kind of grant, bequest and conveyance. It includes all grants made to this State for educational purposes. In fact it includes every kind of conveyance, bequest or grant which can be conceived of. If the State accept any grant which can be made under the terms of this Article, as it shall finally be submitted, then, unquestionably, it ought to be used in accordance with the terms of the conveyance. The State should not prove false to any of these bequests. Sec., 3 follows Sec. 2, as follows: "The following are hereby declared to be perpetual funds for school purposes, of which the annual interest or income only, can be appropriated, to wit:" and then goes on to set forth what shall be perpetual funds. I think the two sections are about perfect. I am glad to see that the gentleman from Otoe (Mr. Newsom) finds no particular fault with the subdivision of sec. 3, but what he desires may be attained by amending Sec. 12, if that sec. is not already sufficiently explicit.

Mr. NEWSOM. I would like to ask the gentleman, if the language of this section does not provide that the State shall receive bequests, and must not the money be used in accordance with the terms of that bequest?

Mr. LAKE. I think that section 12 provides that no sectarian school shall be maintained by public funds set apart for educational purposes. Now, I will not say that that section is broad enough to cover all kinds of bequests. What I was about to suggest to the Committee, to obviate the objection urged by the gentleman from Otoe (Mr. Newsom) is to amend section 12 so as to include what the gentleman desires—that the State shall not accept bequests for sectarian purposes: That would cover the entire ground, and obviate all the difficulties that are urged on that score. I do hope that these sections —which have evidently received careful attention, shall be not tampered with, for the purpose of engrafting the ideas just advanced. I think the two sections are complete.

Mr. NEWSOM. Mr. Chairman, I think my view is right.

Mr. LAKE. Let me ask the gentleman a question. Does he take the ground that it is provided in this section that the State shall not receive a grant, intended by the person making the bequest to be used for sectarian purposes?

Mr. NEWSOM. No, sir.

Mr. LAKE. Then would it not be well to amend section 12, so as to bar the State from receiving such bequests; would not the end he is striving for, be attained?

Mr. NEWSOM. Yes, sir, but I see no object in amending section 12 until we come to it. We should amend section 2 now, and section 12 when we come to it. Section 12 reads: "No Sectarian instruction shall be allowed in any school or institution supported by the public funds set apart for educational purposes," I understand that to apply to the public funds of the State, and not to any private funds which may be donated to the State. They must be provided for in some other way:

Mr. HASCALL. Mr. Chairman, I would like to ask how the proposed amendment stands now?

The CHAIRMAN. The question is

upon the substitute offered by the gentleman from Cass, (Mr. Maxwell.)

Mr. MAXWELL. (reads 3rd line of third section) "First, such per centum as has been or may hereafter be granted by Congress on the sale of lands in this State" I submit that the language of that line is not clear. There seems to be a question as to what this means.

Mr. LAKE. We had a fund of $17 000 once. It has reference to that, no doubt.

Mr. MAXWELL (reads) "All moneys arising from the sale or leasing of the sixteenth and thirty-sixth sections in each township of this State, and the lands selected, or that may be selected, in lieu thereof. Third, the proceeds of all lands that have been or may hereafter be granter to this State where, by the terms and conditions of such grant, the same are not to be otherwise appropriated."

Now it does seem to me that that ought to be embodied in a few words; and I think, under the proposition I offered, the language avoids any repetition whatever. The language is clear and precise. This is my substitute. "The proceeds from the sale of all lands that have been or hereafter may be granted by the United States to the State for educational purposes, and the proceeds of all lands or other property given by individuals or appropriated by the State for like purposes, shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation."

Mr. LAKE. I would like to ask the gentleman if he intends his amendment to include the 5 per cent fund?

Mr. MAXWELL. It does not.

Mr. BALLARD. Mr. Chairman. It seems to me it is the duty of this Convention to get up a Constitution that shall be complete, so that our work, when done, shall be well done, —that there shall be no question as to the reading of particular points. And when courts are called upon to put a proper interpretation on the Constitution that there may be no question as to the interpretation of this point. The Committee, on this subject, I think have done their duty well. They have left no uncertain sound in my opinion, in this section. In the first place, we hear it objected that the language is too broad, and in the next speech is that it is too short, but the language, I think, is definite and good as it stands.

The CHAIRMAN. The question is on the substitute offered by the gentleman from Cass (Mr. Maxwell.) for the 2nd and 3rd sections.

Mr. TOWLE. Let us hear it.

The Secretary read the substitute as follows:

The proceeds from the sales of all lands that have been, or hereafter may be granted by the United States to the State for educational purposes and the proceeds of all lands or other property given by individual or appropriated by the State for like purposes shall be and remain a perpetual fund, the interest and income of which, together with the rents of such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation.

Mr. MAXWELL. Mr. Chairman, I withdraw my substitute.

Mr. NEWSOM. Then, Mr. Chairman, I withdraw mine, and offer the following: The Secretary read the amendment, as follows:

"All lands, money and other property granted, or bequeathed for educational purposes shall be used and expended in accordance with the terms of such grant, bequest or conveyance. Provided, the State shall not receive any lands money or other property for sectarian purposes."

Mr. LAKE. Mr. Chairman, I have no objection to the incorporation of such a provision in the Constitution in the proper place, but it seems to me that this is not the place for it, and I hope the gentleman will not insist upon encumbering this section with such amendments. I think section 12 will be the proper place and when we come to that section I am willing to entertain the amendment.

Mr. TOWLE. Mr. Chairman, I think there is no gentleman on this floor that will object to the provision offered by the gentleman in the proper place; but I hope it will not be appended to this section as a proviso, which I think is complete.

Mr. GRAY. Mr. Chairman. Just one word before this goes to a vote. The Committee on this Article worked many days and hard upon this, and counseled with all those whom they thought were acquainted with the subject; and they have presented the result of their work before this body, and now it devolves upon the gentlemen here, who wish to amend this to show its defects; None have been shown yet. On the other hand, these amendments are not complete. They have all been presented in haste and without sufficient thought. The last one is not satisfactory and complete; and I believe it does not cover the object the gentleman himself has in view. His objection is that he does not wish to allow the State to receive and disburse moneys for sectarian education and schools. We all agree with him in opposing that, and will support any section that will attain that. But this amendment does not do so, I think. Then why not leave this section as it is and bring in this where it properly belongs?

The CHAIRMAN. The question is on the amendment by the gentleman from Otoe (Mr. Newsom.)

The amendment was not agreed to.

The CHAIRMAN. The question is on the adoption of the second section.

The second section was adopted

The Secretary read the third section, as follows:

Section 3. The following are hereby declared to be perpetual funds for common school purposes, of which the annual interest or income only can be appropriated, to wit:

First, such per centum as has been or may hereafter be granted by Congress on the sale of lands in this State.

Second, all moneys arising from the sale or leasing of the sixteenth and thirty-sixth sections in each township of this State, and the lands selected, or that may be selected, in lieu thereof.

Third, the proceeds of all lands that have been or may hereafter be granted to this State where, by the terms and conditions of such grant, the same are not to be otherwise appropriated.

Fourth, the net proceeds of lands and other property and effects, that may accrue to the State by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons.

Fifth, all moneys, stocks, bonds, lands and other property now belonging to the common school fund.

Sixth, all other grants, gifts and devises that have been or may hereafter be made to this State, and not otherwise appropriated by the terms of the grant, gift or devise, the interest of which said funds together with all rents of the unsold school lands, and such other means as the Legislature may provide, shall be exclusively applied to the following objects, to wit:

(1.) To the support and maintenance of common schools in each school district in the State, and the purchase of suitable libraries and apparatus therefor.

(2.) Any residue of such funds shall be appropriated to the support and maintenance of academies and normal schools, and schools of an intermediate grade between the common schools and the university, and the purchase of suitable libraries and apparatus therefor.

Mr. ESTABROOK. Mr. Chairman. This Article was reported, after we had agreed on it, with some little haste, just before the adjournment, and without copying; and I see a point in this section, I think, where the Committee on Adjustment would have some work. We intended, in the first place, to provide for the maintenance of common schools in each school district in the State. That is the first object. If there should be a residue, and let me state there will be abundance of residue for the object, according to the estimate made by a sub-committee of which Gen. Vifquain is chairman, it is made to appear that the State will have about 3,000,000 acres of school land which, at seven dollars per acre, will amount to at least $25,000,000. The other western States have about $3,000,000, we will have between $20,000,000 and $30,000,000 without the fund that may be provided for by law, the fund arising from fines and forfeitures and license money, so that there will be an abundance, I think, to provide for all these classes and grades of schools. The object was to provide amply sufficient for the common schools, and the residue, as provided in the section of this provision. If the Legislature see fit to use that residue for the forming of normal schools, etc., they may do so. That was the design, if it can be accomplished in a more brief way I am agreeable.

Mr. LAKE. Mr. Chairman, I move to strike out the words "the interest of which said funds," in the sixth sub-division of section three.

Mr. WAKELEY. Mr. Chairman, I do not think that would accomplish the purpose. At the same time this matter should be left to the Committee on Revision and Adjustment. There is, perhaps a little fault in the entire section as it stands, but I do not think the amendment offered by my colleague will remedy the defect. In the commencement of the section there is a distinct declaration that funds remaining shall constitute a "perpetual fund for school purposes, of which the annual interest or income only can be appropriated." Then follows a specification of the fund that makes a complete provision as far as it goes; then should follow the provision, in substance, as is incorporated in the sixth subdivision.

And all needed, it seems to me, is to reconstruct the sixth subdivision by making a specific declaration that the interest on the funds before mentioned shall be appropriated as now provided. The Committee on Revision and Adjustment will remedy that matter better than we can in Committee of the Whole. It is a mere question of punctuation.

Mr. LAKE. Mr. Chairman, I withdraw my motion.

Mr. THOMAS. Mr. Chairman, I would like to ask the chairman of the committee whether there is any provision for the proceeds of lands granted by the United States to this State for educational purposes? I do not think there is any such provision in this section. I see that the provision alluded to in the Wisconsin Constitution is "The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, for educational purposes (except the lands heretofore granted for the purposes of a university), etc."

Mr. WAKELEY. Sections three or six will either cover it.

Mr. THOMAS. (reading subdivision two and three of section three.)

"Second, All moneys arising from the sale or leasing of the sixteenth and thirty-sixth sections in each township of this State, and the lands selected, or that may be selected, in lieu thereof.

Third, The proceeds of all lands that have been or may hereafter be granted to this State where, by the terms and conditions of such grant. the same are not to be otherwise appropriated."

Congress may grant us other sections for educational purposes, which may be neither 16 nor 36.

Mr. LAKE. The sixth subdivision will cover it.

Mr. THOMAS. I do not know whether it is sufficient.

Mr. ESTABROOK. I think it sufficient.

Mr. CAMPBELL. Mr. Chairman, I move an amendment to section three, that the words "sixteenth and thirty-sixth" read "sections number sixteen and thirty-six". It will look very silly to pass this. The grant of Congress says we are entitled to sections number sixteen and thirty-six. Now let us make our law in compliance with that. I hope the Convention will not pass over this.

The motion was not agreed to.

Mr. THOMAS. Mr. Chairman, I do not know what amendment was made to "the interest of which said funds," in the sixth subdivision. It is suggested that it should be amended to make it " all the funds."

The CHAIRMAN. The Committee on Adjustment is to settle that.

Mr. THOMAS. Mr. Chairman, I move that we strike out the words "interest of which said funds," and insert "the interest arising from all funds mentioned in this section."

Mr. McCANN. Mr. Chairman, I would like to call the attention of the Convention to one fact.

Mr. THOMAS. I withdraw my amendment for the gentleman (Mr. McCann.)

Mr. McCANN, I think there is more force in the suggestion of my colleague (Mr. Campbell) than the Convention at first supposed. We have some townships that are fractional. This phraseology "sixteenth and thirty-sixth sections" is not right. If every township was full, and we had no fractions, perhaps the working of this section would be sufficient; but supposing that we cut off these sections from a township, what then? If we have the sixteenth and thirty-sixth sections we have not two sections in that township; whereas in every township in the State which is fractional we still have the sections number sixteen and number thirty-six.

Mr. ESTABROOK. I find, on looking at the law, the language is different. It reads "sections number sixteen and thirty-six etc." I move to amend by saying "all moneys arising from the sale or leasing of sections number sixteen and thirty-six."

The amendment was agreed to.

Mr. THOMAS. Mr. Chairman, I now re-offer my amendment.

The amendment was agreed to.

Section three, as amended, was agreed to.

The Secretary read section four, as follows:

> Sec. 4. The Legislature shall require by law that every child of sufficient mental and physical ability, between the ages of six and sixteen years, unless educated by other means, shall attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law, and may establish schools for the safe keeping, education, employment and reformation of all children of such age who are destitute of proper parental care, or who are growing up in mendicancy, ignorance, idleness or vice, which schools shall constitute a part of the system of common schools.

Mr. ESTABROOK. Mr. Chairman, I would move to amend by striking out the word "may" and inserting the word "shall," so as to make it imperative. In committee, in the first place it proposed that ordinarily all children should be educated, and subsequently we agreed to leave it to the Legislature to take up the vagrant upon the streets and provide for his education; but when we reflected for a moment, we found there was a necessity that we should have some place for the provision of a reformatory school, so that when a boy is refractory or guilty of some offence and it is necessary to exclude him from the school in which he is, he may be taken where he shall be dealt with. And it is required that you provide for him.

The motion was agreed to NEM. CON.

Mr. MANDERSON. Mr. Chairman, I move to strike out the word "six" and insert the word "eight".

Mr. ESTABROOK. It seems to me six is old enough. A portion of this refers to vagrants and waifs who have no parental care or guardianship whatever. It is for their use; not for the parents. The State owns them from the time they are born into the world, and is educating them in the streets of our larger towns, such as Omaha and Nebraska City, all the while; and this State, whether she feels it or not, owns that little creature unless he is condemned to the gallows or comes to some ignominious doom.

Mr. McCANN. Mr. Chairman, I hope that the gentleman from Douglas (Mr. Manderson) will withdraw his amendment, for this reason; the object we had in view in taking up these little waifs, as my friend Gen.

Estabrook calls them, was, primarily, to teach them to read and write. We want no men or women in this State hereafter, who have to make their mark in the way some men and women in this State now do, instead of writing their name; and at the end of the eighth year that object may be accomplished. We all know, those of us who have had experience in the education of the young, that at the age of eight years, many children have received that amount of education they expect to receive; and shortly after that they are put to some employment which deprives them of further education afterwards. And we desire to put them in the proper schools at the age of six years. That two years is a very important period of life to them. I do hope the age, as specified here, may remain.

Mr. MANDERSON. Mr. Chairman, The doctrine of compulsory education will meet with no stronger or warmer advocacy from any gentleman on this floor than myself. I believe we should require, by constitutional enactment and by law, that, children should be educated; that we should punish severely the parent or guardian of the child who refuses to educate their child. The section provides "that the Legislature shall require by law that every child of sufficient mental and physical ability between the ages of six and sixteen years, unless educated by other means, shall attend a public school supported by the common school fund, for some definite length of time each year, Etc." Now we must recognize the fact, those who have observed the matter of education at all, that there are a vast number of parents who do not believe in school education for the child of six years. I do not believe we should take the infant of six years and place him in school. The proper place to educate so young a child is at home, under the mother's care, and not under the care of a teacher. I do not believe in a hotbed growth, and taking the young child and forcing a certain knowledge into his mind. You injure a child by forcing into him that which the mind is not sufficiently matured to receive. I think it better we should require that this compulsory education commence at the age of eight years. That deprives no parent of the right or privilege of sending a child of four, five or six years, if he sees fit, to school, and it does not compel the parent to educate until the child is sufficiently matured and fit to receive education.

Mr. KIRKPATRICK. This section includes the time between six and sixteen years. and part of the requirement is that each year the child shall be put to school. I am opposed to forcing children to school at the tender age of five or six years. Those who have been sent to school early have not made the best progress. I am opposed to the system of compulsory education. I am not behind the age and opposed to progress. I have great respect for the educational advantages offered by Russia [Prusia?] to its subjects. But I do resent the idea that the child belongs to the State. That was the doctrine of the Spartans.

I would like an explanation from the gentleman upon the wording of this fourth section. Now it strikes me here that it is a delicate matter to ascertain whether the child is educated or not. Who is to ascertain this information? Is the school board in the district or the superintendent of the county? I would not be understood as opposing education. I believe the proper exercise of our duties and privileges as citizens depends upon our intelligence. But I know there are men who are in favor of not only a forcing educational system, but of a professional class of teachers, who shall be teachers and nothing else.

It appears there is a provision here for other schools than ordinary schools, for it is provided here that the child shall attend school after a certain age, (reads Sec. 4) "The Legislature shall require by law that every child of sufficient mental and physical ability, between the ages of six and sixteen years, unless educated by other means, shall attend a public school supported by the common school fund, for some definite length of time each year to be fixed by law, and may establish schools for the safe keeping, education, employment and reformation of all children of such age who are destitute of proper parental care, or who are growing up in mendicancy, and ignorance, idleness or vice, which schools shall constitute a part of the system of common schools."

Mr. NEWSOM. Mr. Chairman, I disagree with the gentleman from Douglas (Mr. Wakeley) where he says that the children of the State belong to the State. I believe there are certain inalienable and indefeasable rights belonging to the people —rights which belong to the child. I believe in education as much as any one here, but when you say that you shall take the child from the parent as you would take property by process of law, and compel him to go where, perhaps, the parent would not like to have him go, you take away certain indefeasible rights. For if the parent has not a right to his own child, what in the name of Heaven, can he have a right to? I believe no man in this State has a right to take my child from me and compel it to go where I don't want it to go. I believe it is my privilege to resent it. This doctrine of compulsory education may do in monarchial governments in the old countries, but it will not do in free America. Now, as to this applying to destitute children, that is another thing. Those are subjects who ought to be provided for by the State; those are children which the State ought to assume control of; but I say it is no right of the State to say my child shall be forced to go to school if I don't want it to.

Mr. MANDERSON. It seems to me that the gentleman from Otoe (Mr. Newsom) strangely misconceives the doctrine of compulsory education, etc., and he strangely misconstrues the meaning of my colleague (Mr. Wakeley) has no right in the children of the people of the State. My friend from Otoe (Mr. Newsom) may gather about him his young children and shall say in the language of that ancient matron, "these are my jewels," but I would remind him that these jewels are in the rough—they are unpolished they are uncut. The State says I will take these jewels of yours and polish them: I will fit and prepare them for the uses of the State. Why the gentleman seems to say that he has the same right to his child that the slave owner had to his slaves, a few years ago "why," he says, "can the State compell me to send my child to school?" I say "yes," in this State. Mr. Chairman, education is as necessary to the child as its mother's milk; and the parent who would keep back the advantages of education from his child. would sell him to ignorance and the evils which grow out of ignorance. I say that the doctrine of compulsory education is based upon the principle which requires every parent to place his child upon the high road to respectability and prosperity. It conflicts with no right of the parent. This idea however, Mr. Chairman, would come in more properly when we come to the adoption of the Article. Unfortunately, Mr. Chairman, I have no children, and I don't know whether I can count on them in the dim future—

Mr. BOYD. You might amend the Constitution perhaps, Genl., (Laughter.)

Mr. MANDERSON. I suppose that could be done. As I said, I have no children, but there died at my house in Ohio, some years ago, a beautiful accomplished girl, some 16 years of age. The disease of which she died was a puzzle to the physicians, but upon a full investigation of her history, they came to the conclusion that she was a victim to that hot bed of education in New England which has driven many to idiocy or the grave. At 16 years of age, she had an amount of knowledge that would be a credit to an adult. I doubt if there is half a dozen members of this body, who possess the knowledge of the dead languages which this girl possessed: but, taken away from the mental food upon which she fed, and it was like taking a drinking man from his stimulants—she died under all the symptoms of delirium tremens. If she had lived, insanity would have been certain, as her nervous system had been completely overworked. She had been kept constantly at school from a very early age. I think, Mr Chairman, that the amendment which changes the age from 6 to 8 years, is a proper one. Looking further along, we find a section which provides "for the education, safe keeping, employment and reformation of destitute children" etc. Now, if my amendment prevails, it will apply to this class as well. With the consent of my second, I move to strike out in the 5th line, the words, "of such age," and substitute the words "under the age of 16 years." It seems to me that we should not limit the age to 8 nor even 6 years of age. In some of our large cities we have children of tender years thrown upon the charities of the world; I would have the State take these and give them proper parental care.

The CHAIRMAN. The question is upon the motion to strike out the word "six" and insert the word "eight."

Motion agreed to.

The CHAIRMAN. The question is now upon the motion of the gentleman from Douglas (Mr. Manderson) to strike out, in the 5th line, the words "of such age" and insert the words "under the age of 16 years."

Motion agreed to.

Mr. NEWSOM. Mr. Chairman, I move to strike out the word "proper" in the 5th line.

Mr. HASCALL. Mr. Chairman, I think it will defeat the object aimed at in this section to strike out that word. This intends proper care and education to children without parents, or whose parents will not give them proper parental care. I do not wish to multiply words, but I think that the child who has parents but who will not give him proper care should be taken charge of and provided for by the State.

Mr. KIRKPATRICK. There might under that section a question arise as to what is parental care.

Mr. ESTABROOK. I think the word "proper" is, in fact, proper in that place. In one of Dicken's works, I think there is a character called Fagin, who had the education, as a parent, of all the little thieves. I think such, would not be considered by our courts as proper parental care. My opinion is that in many cases the children should be taken away from the destructive influence of improper parental care, and dens of infamy where many of the children of the State of Nebraska are being, educated to day, and provided for by the State.

Mr. LAKE. Mr. Chairman, without multiplying words to a great extent on this question, I must say that it does seem to me that the word "proper" should be retained. A child may be provided with partial care, but it may be entirely inadequate to its wants. The gentleman from Otoe (Mr. Newsom) seems to be a little exercised as to how this shall be carried into effect. I don't think any of his children will be taken away from him, or from any other good parent. It has been said that the State has not the right to take children from their parents; but the State has done so. And how frequently does it occur that our courts have had to take children and appoint guardians for them? It is only intended by this section to provide for the doing of that which has been done in other ways. It seems to me that the amount of care should be determined by the Constitution, and that the word proper is the exact word needed. I should very much dislike to see that word stricken out, for I think it would destroy the intention of the section: It has been objected to that the children belong to the State; Yet this is true to some extent. If not, why are we taxed for the common school fund? If the State has not the right to say that the parent shall send the child to school, shall it say to the parent who is willing to educate his own children that he shall contribute to the school fund for the education of others? If a man from penuriousness or other cause neglects the proper care and education of his child it is right that the State should take the child and do for it that which the parent has neglected to do. Why, shall it come to this; that the child is so much the slave of the parent that he may refuse to clothe and feed it yet not be amenable to the laws of the State? That would be a curious doctrine to enunciate in this age of the world. The parent can be compelled through the action of our courts to provide necessary clothing and food for his child; and so it is with education. He can be compelled to educate his child. If a portion of the people pay the expenses, he can be compelled to pay them whether he voluntarily does so or not. I am in favor of the provision as it stands. I am fully committed to this doctrine of compulsory education which has worked well in Europe. It works well in Massachusetts and will work well here. I take the high ground that no parent has the right to bring up his children in ignorance, profligacy and vice. If he do so he has forfeited his right, as a parent, to the custody and care of that child. It is the duty of the State, in all such cases, to see that right is done. The parent violates his right to the custody and control of the child. For those wrongs the child has the right to call upon the State for protection. That is a part of the duty of government—to protect not only the grown up men and women, but protect the little ones. And if, through ignorance, if, through avarice, the child does not get care and attention from the parents, I hold it is the high duty of the State to see to it that these little ones are protected and educated. In other words, that the State become parent, guardian and protector of that child or those children who have lost their natural guardians and protectors.

Mr. NEWSOM. What the gentleman from Douglas (Mr. Lake) might consider proper, the gentleman from Otoe (Mr. Newsom) might not. What one might consider proper, another might think wrong. It becomes a matter of necessity that the Legislature must say what is proper. I believe it to be the duty of the State to take care of children deprived of parental care, destitute of the necessary means of education. Upon the other question I believe it is my indefeasible and inalienable right to hold and control my child, not brutally, not meanly, but it is my right to take care of the child; and no power could force me to send it where I do not want it to go. If I deem the age of eight or nine too early to send my child to school, it is my privilege to keep him away. I do not conceive, but that if a man has no right to his child, he has no right to anything. If you can take his child away cannot you take anything else? Is there no alienable [inalienable] right?

Mr. MANDERSON. Will the gentleman permit me to ask him a question? Does this right to own a child extend to father, mother or both?

Mr. NEWSOM. Both.

Mr. MANDERSON. Supposing there should be riot and confusion in the household, and consequent divorce, who shall take the child?

Mr. NEWSOM. The law decides it.

Mr. MANDERSON. Then the law is the superior parent.

Mr. NEWSOM. Yes, under certain circumstances.

Mr. LAKE. Allow me to ask a question. Would the right be inalienable, then, if it could be taken from him by law?

Mr. NEWSOM. In a certain sense.

Mr. LAKE. Yes we all agree to it in a certain sense.

Mr. NEWSOM. There is the difficulty between us, I argue that where a parent does his duty in every sense of the word, excepting this of sending to school. I am not talking of extreme cases, where it becomes the duty of the State to step in and take care of the child. Where there is a division in the family, there should be some law provided for the child. I do not know whether I am right or not, but I do not believe it right to take my property or money, even if every man but myself agree to it, without my consent, and appropriate it to any specific or certain purpose. I do not believe it to be sound law to take my property under the educational system; to make me educate another man's child; but public policy may acquiesce in it. And that is the only ground on which it can be sustained. I do not believe you can take my money and appropriate it to private corporations, if all the men in the State say so. I do not believe you can do it properly; public policy may demand it, and it may be done to gratify public policy, but the right is nevertheless there. It is mine and you cannot evade it. That is the ground on which I argue this question.

Mr. TOWLE. Mr. Chairman, It has been said by somebody that "State does not consist of mortar and bricks, it does not consist of ships of every sea, railroad trains running over every hill and through every valley; it does not consist in coffers of wealth, and in the magnificent resources only; but that it consists in the integrity, in the intelligence, in the probity, and in the culture and understanding of the community." That I believe is but a general proposition which has been produced by the person whom I am quoting. In more appropriate language, that strikes nearer to the heart, and such being the proposition upon which we start out, it follows, as a natural consequence, in my judgment, that the State has the power and the right to emancipate from the control of father, and lay down rules and directions which should guide and control the intellect of that child, and that future citizen. If the Legislative power of the State has the right to emancipate that child at the age of twenty-one, certainly it has the right and power to emancipate it at the age of five, six or seven years and place it where humanity may require. This is no new proposition, no new theory. As the gentleman from Douglas (Mr. Lake) remarked, it has been decided and adjudicated in cases in several Supreme Courts. In Ohio this question came up on the very proposition which this gentleman has laid down—the inalienable right the father has for the care of his children. In the fifth Ohio report where parties had been divorced, one had possession of the child, and the other came in with a writ of habeas corpus, claiming it; the child was brought into court, criminations and recriminations were brought in showing that neither party was fit to control the welfare of the child. The court laid down this universal proposition—it was the duty of the Courts of Chancery within the provision of the State, to take hold of these children and draw them out of vice, crime and ignominy; place them in either party, or take them from both, and place them in the hands of some party who can control, rear and guide that child as it should be under the best influences of civilization. The State has the right for this reason, because it is a general proposition, that without education crime will be in the land. If the child is brought up in ignorance and crime upon whom does the wrong rest? Upon the State, and no other party. If he is put in the penitentiary, it is the people who pay for it: it comes out of the pocket of the individuals who own property in the State; and they have the right to say that in the beginning, in the youth, this twig shall be bended in such direction, and shall not be found in the poor house, in the penitentiary; that he shall not hanged from the gallows, but so guided, that the influences may be thrown around him on the side of virtue and intelligence; and that the taxes of the people and the taxes of the State shall not be used hereafter and appropriated for the purpose of keeping and directing that child. Why, Mr. Chairman, the man in Illinois, the other day thought he had a right to his child when he tortured and whipped it to death. and I ask who can read the account of this cruelty without a feeling of horror. Suppose there had been regulation in that State that child might have been saved. I believe, sir, the State has this power and ought to exercise it, under appropriate control and supervision. Upon the ground of safety to the taxpayers this ought to be done, that we may not be burdened with these taxes and penitentiaries and other buildings. In all these buildings you will find individuals whose education has been entirely neglected in their early youth, whereas otherwise they would have been placed upon the highway to wealth and industry.

Mr. KIRKPATRICK. I say again I think the amendment should prevail. I think, although I have been edified by the speeches, there has been much said that might have been said elsewhere. The section under consideration seems to have been carefully drawn, and much thought exercised in its preparation. This section provides for the "safe keeping" of children. I do not know what that means unless it is the intention to secure the State against crime. Then it goes on to provide for "the education, employment and reformation of all children of such age who are destitute of proper parental care" and etc. The only question here is what is proper parental care? There is no man who will say but the State is in duty bound to maintain them. Whether it could be better done by Legislative enactment, or some other means, I am not prepared to say. I know that Mother England has penitentiaries and reformatory institutions, but they are mostly, I think the result of the charity of private individuals. Now, about the man's inalienable right to his child. I say there is a God-imposed responsibility placed on a parent in regard to his child that no Legislature can take away or release him from. If a man neglected to give proper education, and care and support, then I say it is the right of the State to interfere. I dissent from the proposition that all children belong to the State; that is carrying things too far. I think the State owes its duty to the children of the State that it must perform under certain exigencies.

The CHAIRMAN. The question is upon the amendment of the gentleman from Otoe (Mr. Newsom), to strike out the word "proper".

The amendment was not agreed to.

Mr. MAXWELL. Mr Chairman, I now move to amend the fourth section by adding "provided that the sum paid out of the common school fund to sustain said institutions shall not exceed in amount in any one year, the proportion, per capita, of the whole number of children and youth between the ages of five and twenty-one years resident of the State." Now Mr. Chairman in reading this section it will be perceived that this proposition to establish reformatory schools provides that the Legislature "may establish schools," "and shall", as we now amend it, "establish schools for the safe keeping, etc." Now I propose to amend so that there shall only be a proportion drawn out of the common school fund for the support of these children. In every town of this State you may establish a reformatory institution under the head of "common schools" which is, in fact, a house of correction; and support these out of the common school fund; and it is wrong. They ought to be supported by funds voted by the Legislature. Under this provision in the Constitution we may establish a reformatory institution in every county in this State, and you may provide to maintain them out of the common school fund. "They shall establish." Where? Why, wherever you can be be made to believe they are needed. It does seem to me it is giving a great deal of power to the Legislature to establish this class of houses of correction. And it seems, too, there is a liability to divert the school fund from its proper channel for the support of houses of this character.

Mr. LAKE. It seems to me, Mr. Chairman, it would be well to entrust some things to the Legislature; at least we ought not to assume that we have a great deal more wisdom than those who may be elected by the people hereafter to make the laws and carry into effect the provisions of the Constitution. I am willing at least, to entrust some things to the Legislature, and to the good sense of the people. I do not fear that the good people of the State of Nebraska, or their representatives whom they may send here, will squander their own moneys upon children of this class. I have no fear of the danger, if there be any danger at all, that they would appropriate any funds unless compelled to do so by the provisions of the Constitution; because we cannot conceive that the funds which are required for the support of these schools will be taken entirely from the school fund. But the Legislature will not be required to build up these schools and provide for their support out of the common school fund, but may provide for the support of them by the levy of a general tax upon the people of the State. I would say leave it to the wisdom of the people as expressed by the representatives they may elect to represent them in the Legislature. I should oppose the amendment.

Mr. MANDERSON. I too, hope the amendment proposed by the gentleman from Cass (Mr. Maxwell) will not prevail. I agree with my colleague (Judge Lake) that we are safe to leave this matter in the provisions of section four to the Legislature. I apprehend no such result as is supposed by the gentleman from Cass (Mr. Maxwell). I would not limit the amount the Legislature might expend for this purpose, as he proposes to limit. The provision in the Constitution of the State of Ohio, while it does not go into detail as this does, yet under its provisions the Legislature of that State has seen fit to take some such action as pointed out in this section, not by the organization of reformatory schools, but by organizing and maintaining one reform school. The Legislature of that State purchased, some years ago, a tract of land, and upon it established the Reform Farm of Ohio, an institution that has done immense good. The education which may be taught children does not consist in teaching them the A. B. C., but it means that the State shall assume towards them the attitude of a parent, and teach them some trade. The Probate Judge is authorized, if there be room in the Reform Farm, to send a child for whom application is made. There it is cared for; taught habits of industry; and taught some trade, perhaps farming. That institution is, to a certain extent, self-supporting. It is very little tax upon the people of the State. I think it was first established out of the common school fund, but it has maintained itself by cultivation of the broad and beautiful acres making up the farm, and it seems to me that under this provision as it is, some such action might be taken by this State. I shall, therefore, oppose the amendment.

Mr. HASCALL. Mr. Chairman, I move that the Committee rise, report progress, and ask leave to sit again.

Motion agreed to.

Mr. STEWART. Mr. President, the Committee of the Whole have had under consideration the report of the Committee on Education, School Funds and Lands, and beg leave to report progress, and ask leave to sit again.

Adjournment.

Mr. LEY. Mr. President, I move that we adjourn until 2 o'clock this afternoon.

Motion agreed to. So the Convention (at twelve o'clock and four minutes) adjourned.

AFTERNOON SESSION.

The Convention met at 2 o'clock and was called to order by the President.

Privilege of the Floor.

Mr. MANDERSON. Mr. President,

I have a resolution I wish to offer.

The Secretary read the resolution as follows:

RESOLVED: That the privilege of the floor be extended to Governor Dennison of Ohio.

Mr. MANDERSON. Mr. President, I move the adoption of the resolution.

The motion was agreed to.

Mr. McCANN. Mr. President, I move that the privileges of the floor be extended to the Hon. B. E. Smith of Columbus, Ohio.

The motion was agreed to.

Mr. McCANN. Mr. President, there are several citizens of Nebraska City here with these two gentlemen, representing different railroad interests and I ask that the privileges of the floor may be extended to them during their stay this afternoon.

The PRESIDENT. The request will be granted unless some gentleman objects, and I will just say that the privileges of this floor will be extended to any friend that any member may see fit to invite here, unless some objection is made.

Mr. McCANN. Mr. President, I move that we now go into Committee of the Whole to consider the report of the Committee on Education, School Funds and Lands.

The motion was agreed to.

So the Committee went into the Committee of the Whole, Mr. Stewart in the Chair.

The CHAIRMAN. Gentlemen of the Committee: We have under consideration the amendment offered by the gentleman from Cass, (Mr. Maxwell) to section four. The Secretary will read the section and amendment.

The Secretary read as follows:

Section 4. The Legislature shall require by law that every child of sufficient mental and physical ability, between the ages of eight and sixteen years, unless educated by other means, shall attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law, and may establish schools for the safe keeping, education, employment and reformation of all children under 16 years of age who are destitute of proper parental care, or who are growing up in mendicancy, ignorance, idleness or vice, which schools shall constitute a part of the system of common schools.

PROVIDED. That the sum paid out of the common school fund to sustain said institution, shall not exceed in any one year, the amount per capita in proportion to the whole number of children and youth between the ages of 5 and 21 years, resident in the State.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Cass, (Mr. Maxwell.)

The Committee divided and the amendment was not agreed to.

Mr. GRAY. Mr. Chairman, I desire that the word "shall" in the 4th line which was substituted by the amendment, be stricken out, and the word "may" substituted, if in order.

The CHAIRMAN. The motion is not in order.

Mr. ESTABROOK. Let me suggest to the gentleman, that after we get through with the Article, section by section, in the Committee, then then the whole bill is subject to amendment.

Mr. REYNOLDS. Mr. Chairman, I

have an amendment to offer.

The Secretary read the amendment as follows:

Strike all after the word "shall" in the first line down to the word "established" in the fourth line, and to strike out the words "of such age" in the fifth line, and insert the words, "between the ages of 5 and 16 years."

The amendment was not agreed to.

Mr. MANDERSON. Mr. Chairman, I move the adoption of the section as amended.

Mr. WAKELEY. Mr. Chairman, I am strictly in favor of the principles of this section. I believe that a provision making it obligatory on the Legislature to establish reformatory institutions for the young and destitute is necessary; and it is for this reason that I am anxious to see the section so framed as to have no misunderstanding of it by the people when they come to vote upon it. I find in the latter part of the section, that which I think, if not wrong, would be liable to a misconstruction. It provides for the reformation of "all children of such age, who are destitute of proper parental care." Now, sir, I do not think it is the intention to say that from the mere fact that a child was destitute of proper parental care, he should be sent to the reform school; but, sir, it is liable of being so construed. The child, it is true, may be an orphan, and be thrown entirely on its own resources, and yet not be a proper subject for the reform school. I think it might be made plain by striking out, in the 5th line, the words "are destitute of proper parental care or who" and inserting the words "for want of proper parental care or other cause." I offer such as an amendment.

Mr. MYERS. Mr. Chairman, before I vote for this, I wish to know whether this is to be that part of the schools of the State commonly known as ragged schools—that is, schools for such children as have not the means of education. Whether it is intended to make a distinction between the poor and the wealthy. I would not desire to see anything of this kind placed in our Constitution. There ought to be no such distinction made in the Constitution. I think, however proper it may be for the Legislature to make it, we ought simply to lay the foundation of a general school system that embraces all the children of this commonwealth. The Legislature will put this clause of the Constitution in operation by appropriate law. If we establish a house of correction for vicious children, that may be within the jurisdiction of the Legislature; but I would like to present a school system to the people of the State that is not embarrassed by any insinuations against the purity of the people, against the purity of any child in the State. I do not think it is proper to impeach the rising generation. For these reasons I shall vote against these propositions, and shall prefer to sustain a clause that will give us a common school system in the Constitution without bearing upon its face the least reflection upon any one.

The motion was agreed to.

Mr. MAXWELL. I move that we add to section four the following: "Provided, that this section shall not be so construed as to require said institutions to be sustained entirely from the school fund, nor shall appropriations be made from said fund for the erection of buildings." As this now stands you leave the school fund, to a certain extent, unlimited, so that you will have to sustain an institution of this kind, because this section will admit of a like construction, you can establish this class of reformatory school. If established it must be sustained by public funds. This section will admit of that being sustained out of the common school fund. How many of such buildings shall there be in the State? The number is unlimited, wherever one is necessary. How many scholars are necessary to have an institution of that kind? Perhaps every county in the second tier of counties will have one. If every county on the river has a right to one, every other county has. We must trust something to the Legislature. We submit our work to the people of this State. The school fund may possibly be squandered or diverted from the object for which the grant was given. I think these institutions should not be supported out of this fund; no part of it should be applied for the building. They may establish schools for the safe keeping, education and reformation. Would not that allow them to erect buildings? Here is a specific class of schools "they shall establish." That means something more than common schools. They are to erect buildings, because that is the first important thing to be done. Supposing the law had said they shall establish a university and there was no building. How are you to have one without a building? That is the first thing necessary. I think we ought to adopt some safeguards in order to provide against the possible, if not probable, chances of having this school fund diverted from the original purpose.

Mr. ESTABROOK. I wish to offer congratulations that one of our members is so sharp and keen. If his remarks have any foundation, I should feel alarmed lest some portions of this school fund might be squandered. He cannot feel any more solicitous than I do, that they shall be properly used. In the first place in regard to the common school fund, whether we are to bring these children from the streets, bring them up in such a way that their better qualities may be unfolded by means of the great magnificence of the school fund which the general government has provided. I would like to know what the gentleman from Cass (Mr. Maxwell) calls squandering? Whether he calls picking up the little waifs as they float around the streets and are becoming vagabonds, whether he calls that a squandering of the school fund? No, sir! If I had my will, and there was but one to be cared for under the provisions of the common school fund, I would see that these little helpless waifs that are brought here into this world unwelcome creatures, they should first be cared for by the provisions of the school law. In the preparation of this Article, I made a mistake by not providing that they should be first cared for. I intended that they should be. I intended, as far as my action goes, that the common school fund should embrace them as closely, if not more closely, in the arms of its protection and guardianship, and just as closely as any other portion of the community. Now, let us see,in the first place, of what the fund consists. I have already stated that no State in the Union of States contains such a fund as we have. We have, as has been reported by a competent engineer, who is a member of the Committee, at least $25,000,000 of money arising from the permanent fund alone; at least $25,000,000, drawing, if you please anywhere from six to ten per cent. We have ten times the school fund of any State in the Union, because any one western state having $3,000,000 of school money, makes it a subject of boast, and we have not less than 21,000,000 or 22,000,000 when all our lands are brought into market and sold. This is our common school fund. In addition to it we have upon our statute book a provision which turns into the common school fund to be used for every day purposes in the way of distribution among the districts. We have all the fines under the penal code and all the license moneys. We regard this fund, the fund arising from the fines under the penal code, and the licenses for the sale of liquor, as the most appropriate fund to turn into the common school fund for the support of this peculiar species of school, peculiarly appropriate for it; hence we left it as I will read: "All other grants, gifts and devises that have been or may hereafter be made to this State, and not otherwise appropriated by the terms of the grant, gift or devise, the interest of which said funds, together with all rents of the unsold school lands, and such other means as the Legislature may provide, shall be exclusively applied to the following objects, to wit," meaning also these funds arising from the violations of the penal code, license moneys and the like, should also be turned into the common school fund. There is sufficient without touching any portion of the fund arising from the sale of land. He says it may be used for the purpose of building school houses. I say the provisions of the Constitution forbid it. This is made a part of the common school system. The fund would divert from the common school and be diverted from the support of those schools. And in regard to that school it provides that the moneys shall be exclusively applied: "first—to the support and maintenance of common schools in each school district in the State, and the purchase of suitable libraries and apparatus therefor." These moneys "shall be exclusively applied to the maintenance of schools." That forbids the idea. It was so regarded in Wisconsin from whence it was taken, and it is the true meaning of the language and can bear no other construction. And the remainder shall be applied as provided in the second subdivision. All this tinkering on the subject is entirely unnecessary. If any gentleman will point out any defect no one will be readier than myself to rectify it. In regard to the location in every district. If there were any necessity for it I would say put one in every school district in the entire State and it is no waste of school money. But I imagine we shall do as other States have done which institute reform schools. We shall need no more of these than lunatic asylums, penitentiaries, etc. Many children are brought before the police courts, charged with crime who, nevertheless, are too small to be accountable, and hence to be dismissed into the streets and left to the evil habits growing upon them. We need a place where these individuals can be tenderly taken into the custody of the law, and placed in some spot where no stain or opprobrium may be attached to them; but where they may have a substantial education. And when men talk about squandering money they have not delved down to the foundation.

Mr. MAXWELL. After listening to my friend I think he entirely misunderstands my position on this subject. I am in favor of the passage of this act. I say it is not proper to attach to the Constitution a provision that part of the school fund be appropriated to maintaining this class of schools, and this language is very strong: "The Legislature, for some definite length of time each year, to be fixed by the law, shall establish schools for the safe keeping," etc. Now, what does that mean, Mr. Chairman? It means something more than schools. That is that they shall establish houses of correction. They give them the name of schools, but that is, in effect, what it means. "Safe Keeping"! What does that mean? Why not have a provision like that in respect to common schools? It means that they shall take the children up and keep them in these institutions—take them out of the world, in fact, and keep them in these schools and educate them. For a certain class of children I am in favor of such an institution as that, and of having a sufficient number of them, and having appropriations made by the Legislature as shall be needed. But to make a provision of this kind in the Constitution that is liable to construction, and to divert the funds from their proper course, I say that is mis-appropriating the funds; and, for the purpose, it might be said, squandering the school fund, not the money. But it is misapplying the money which we are bound to disburse in good faith. "For the safe keeping, education, employment and reformation of all children of such age who are destitute of proper parental care." The gentleman says he would be in favor of having one in every district, if necessary. Now, I object to this because, for one reason, the number is unlimited. Call them by their true name—houses of reformation. There is certain provision that these may be provided for not out of school funds. Now, what will it cost to sustain an institution of that kind for a year? It must have teachers, superintendents and a lot of officers. Salaries would amount to, perhaps, several thousand dollars. How much would it be for Douglas, Cass, Otoe and other counties? That is left indefinite—how much is the appropriation for the house of reformation, in fact. Because if we establish houses of reformation, which is the appropriate term, would not that bear the construction that they build those houses? All I ask is that this fund shall not be diverted from its original purpose. Under this the whole cost must be sustained out of the school fund. The gentleman says our school fund is very large. That is counting our chickens before they are hatched. They will pay two mills on the dollar to sustain the schools. Your property and mine help sustain the schools to day. I do not complain, but this 25,000,000, in all probability we have not got now; and being taxed as we are to sustain the schools in the condition they are now, not yet free, even with this tax. Now, if we divert $20,000 or $30,000 or $50,000 from that fund to support one institution of this kind, does not that divert so much money that might be distributed throughout the State? And if the Legislature felt like it they might appropriate two or three hundred thousand dollars for that purpose.

Mr. TOWLE. It appears to me, Mr. Chairman, that the ground taken by the gentleman from Cass, (Mr. Maxwell) is perfectly tenable, just and proper. The gentleman from Douglas (Mr. Estabrook) begs the question and avoided the point. He went off in a high faluting speech in relation to these little waifs. The logic and spirit of it I heartily concur in. It is the especial duty of the State, at all hazards, to provide for the education and protection of this unfortunate class of human beings. But the question for us to decide is out of what fund these unfortunates shall be provided for. The common school fund is one belonging to the whole State at large. Every man, woman and child is entitled to a per capita amount of that school fund, and it is not right that that fund should be diverted to building reformatory institutions for the large cities. Now, then, from what source shall these moneys come? Why from what portions of the State do these waifs come? We do not find them on the prairies, but congregated in the large cities, where there is a wealthy population; and where vice most abounds. These wealthy communities are able to bear taxation, and these schools should be kept either by a local tax or an appropriation. Mr. Chairman, I am in favor of all these reformatory institutions in the very sections of the State where they are needed. I am in favor, gentlemen, of a direct taxation, or an appropriation out of the general fund, which is the same as a direct tax upon all parts of the State, to defray the expense of these institutions. For that reason, Mr. Chairman, I am in favor of the amendment offered by the gentleman from Cass (Mr. Maxwell).

The CHAIRMAN. Gentlemen, those in favor of the amendment offered by the gentleman from Cass (Mr. Maxwell) will say "aye" those opposed will say "no."

The Convention divided, and the amendment was adopted.

Mr. McCANN. Mr. Chairman, I move the adoption of section 4.

Mr. THOMAS. If the gentleman will withdraw his motion for the adoption of the section, I will offer an amendment.

Mr. McCANN. I withdraw my motion.

Mr. THOMAS. Mr. Chairman, I move to amend the section by inserting after the word "shall," in the 2nd line, the words "where it is practicable." It seems to me there is a defect in the section as it now stands for the reason that in some sections of our State it is an absolute impossibility to send children to school. I believe in leaving this matter with the Legislature, and when it is practicable to send children to school, to make education compulsatory. In some portions of our State, it must be impossible to send children to school. It may be said that the Section applies only where the child is not educated by other means, but in some places parents are not capable of teaching their children. If there are schools within a certain distance, say one, two or three miles then it would do, but there are many places where it would not be possible to maintain schools. Now, I think that this matter might be left to the Legislature to say in what cases it is practicable to enforce this law.

Mr. SPRAGUE. Mr. Chairman, I had prepared an amendment similar to that offered by Mr. Thomas, and I think his amendment ought to be adopted. There are, as he remarks, many places where parents are not able to send their children to school, for the reason that there are no schools in their vicinity, and if the State is going to assume the responsibility of sending these children away to school, it will be found that there is an extent of business on the hands of the State, which will soon absorb the entire school fund.

Mr. LAKE. Mr. Chairman, I will ask whether we have laws to provide how the school districts throughout the State are divided; what territory shall be embraced in each, and also in respect to the organization of these districts? Now it seems to me we are to look upon the formation of this Constitution like reasonable beings. We are not to suppose that the Legislature will punish a parent for not sending a child to school where the Legislature has not provided schools to which they may be sent. I agree with the gentleman from Nemaha (Mr. Thomas) that this matter should be left with the Legislature. Schools will be established when the number of people living at any one point is sufficiently large to warrant. At these places schools will be established and it will be obligatory upon the directors of these school districts to build school houses. Where this is done—where means are provided, then, of course, the obligation will devolve upon the parent to send the child to school. But it cannot be possible that any member of this Convention can seriously entertain the idea that the Legislature will require any thing of the people of the State which can not be done.

Mr. MAXWELL. Mr. Chairman, substantially, I am in favor of section four, but there are many questions arising upon this very section which might be unconstitutional. It seems to me we had better submit this section as an independent section. If we submit it as a part of the Constitution, the entire Constitution is to be rejected or adopted. I therefore move that section four be submitted as an independent proposition. I would strike this section out of the Article.

Mr. ESTABROOK. Mr. Chairman, the gentleman from Cass (Mr. Maxwell) imagines it may be the death of this Constitution if this section is in it. Since our adjournment I have sent several copies of this report to the leading newspapers of the State, with a written request on the margin to "comment." During the past few days, I have received several answers from some of our editors, and they all speak in free, hearty commendation of the report, and of this section. This provision meets with the hearty approval of the Press of the State, and it seems to me it would be exceedingly idle and improper to submit it separate. If anything can be done to perfect it, I shall not object.

The CHAIRMAN. Gentlemen, are you ready for the question? The motion of the gentleman from Cass (Mr. Maxwell) is to strike out section four.

Mr. MAXWELL. Mr. Chairman, If the statement made by the gentleman from Douglas (Mr. Estabrook) is true, there can be no danger in submitting this section as a separate proposition; while if there are any opposed to it, it will give them a chance to express it. The section reads, "proper parental care." There might be some who would want to know just what is meant by "proper parental care." The question might arise upon this as to what tribunal shall determine what is "proper parental care." Shall the school Board be the power, or what Board shall determine this matter? Who is to enter the precincts of the home and determine the action between a man and his children? I always thought that the home was the man's castle. Now I submit that the whole Constitution might be endangered by this section, and therefore I think, it ought to be submitted as a separate section.

Mr. ESTABROOK. Mr. Chairman, there has been considerable said about the word "proper". Now I would like to ask the gentleman, as a legal men, what is to be understood, by the words "common carrier," and who is to determine its meaning? Such things are naturally left to the judgment of the courts and so it would be in this case.

Mr. MYERS. Mr. Chairman, I was unfortunate in being absent when this question was argued so that I am ignorant of what has been done. Nor have I been enlightened much while I was here. I would move to strike out all after the word "law" in the fourth line. I do not wish to to connect with our common school system the idea of criminals, or make our common schools a place of punishment, when they ought to be a place of pleasure. I believe that one school separate from the common schools would be sufficient to accommodate all children of this class for many years.

The CHAIRMAN. The question is on the motion of the gentleman from Cass (Mr. Maxwell) to strike out the whole of Section four.

The motion was not agreed to.

Mr. THOMAS. Mr. Chairman, there is no difference between the gentleman from Douglas (Mr. Lake) and myself. I think there is no danger in leaving it to the Legislature to say whether it is practicable or not. I wish to word the Constitution on this matter so that the Legislature may exercise their discretion upon it; but they cannot exercise any discretion as the Section stands.

The CHAIRMAN. The question is on the amendment as offered by the gentleman from Nemaha (Mr. Thomas.)

The amendment was agreed to.

Mr. MYERS. Mr. Chairman, I move to strike out all after the word "law" in the 21st line.

Mr. GRAY. Mr. Chairman, I shall favor this motion to strike out. I say that if the provision with reference to these reformatory schools could be made what I think it ought to be made I should favor it, but in the shape it is now, with these amendments tacked on it, I cannot support it. The committee reported this Section with the word "may" in place of "shall" immediately following the word "law." They were willing to report that provision, leaving it entirely to the discretion of the Legislature, believing that the time might come in this State when the condition of the people would demand a system of education and reform. I believe, as a general thing it was not considered by that committee that that time had come yet. It was not believed necessary to inaugurate this school at the present time. I should be willing to support the last part of Section four, if the whole matter could be left with the Legislature to establish this kind of schools at the proper time. I agree with the gentleman from Cass (Mr. Maxwell) that these institutions will necessarily be expensive. To appropriate school money to the maintenance of these institutions, would, I believe, be very unpopular with the people of this State. The Chairman of that committee enforced his views upon this committee of the Whole and was sustained. The word "shall" was put in in place of "may;" and I believe the members do not reflect fully upon that question; and I trust no private information will cause them to stand by the vote. I trust this Convention will now consider that the word "shall" makes it obligatory upon the first Legislature to create a number of these reformatory schools and draw upon the common school fund for their maintenance. It seems to me there is no occasion for the immediate establishment of them. It would be improper to appropriate so much common school fund as would be necessary. Therefore, I shall vote to strike out this portion of the section as it stands now.

The motion was not agreed to.

Mr. MANDERSON. Mr. Chairman, I move the adoption of the Article.

Mr. NEWSOM. I move to strike out the words "safe keeping" in the fourth line.

Mr. ESTABROOK. I would like to say a few words in regard to that. We can all imagine some instances in our own knowlege. I recollect in the city of Omaha where there are two boys in a family. A lumber dealer lost money from his office: other individuals in the city lost money from their tills; a system of detection was set on foot and it was found that two brothers, small boys, (belonging to a respectable family,) and others, had combined to travel about the city and in this way they had continued to pilfer money from tills. These boys eight, ten and twelve years old, were brought before the police court. They were tried, found guilty and had to be discharged as they were too young to be sent to prison. They were hardly conscious that they had committed a crime. What shall be done with them? There are but few of them comparatively. It is not true that the country does not have them, because in proportion to the amount of population, as much is done there as in the city. Now these particular instances have come under my own observation and have prompted me, to a very considerable extent, to embrace the doctrine. In regard to the safe keeping of them I tell you, if you do not provide some safeguards, some means by which they may be restrained and educated, you cannot keep them. You might as well undertake to keep a flea under your hand. Mother Goose, in giving her method of cooking a rabbit says first get the rabbit. You cannot educate him unless you retain him, not keep him as a prisoner, that is a mistake. Not to hold him as a criminal; not to put the mark of Cain upon his forehead; but rather to prevent the mark of Cain from being placed there. Place him where he shall have good instruction and example set before him, where he may be made a good and useful citizen. How else will you do it? Do you propose to keep your school system pure by turning these little criminals outside of your protection? My friends, you should do like the good Samaritan, not visit those who are well, but those who are sick. It strikes me as one of the most laudable efforts this Convention can put forth.

The CHAIRMAN. The motion is on striking out all after the word "lay" [law] in the fourth line.

The motion was not agreed to.

Mr. MAJORS. I move that we reconsider the vote that changed the word "may" to "shall" in the fourth line.

The CHAIRMAN. A motion to reconsider is not in order in Committee of the Whole.

Mr. MAXWELL. If the gentleman from Nemaha voted in the affirmative he has a right to move a reconsideration.

Mr. HASCALL. Mr. Chairman, I consider in Committee of the Whole, a motion to reconsider is improper. The whole subject matter is in the hands of the Committee until such time as they rise and make their report. Any time before they rise, if they see fit to change anything they have the power to do it. We are trying to settle details here, and if it is the sense of the Committee to report this section back with the word "may" instead of "shall", I think the Committee have the right to do so.

Mr. MAJORS. There is no difference of opinion between the gentleman from Douglas (Gen. Estabrook) and myself as to the right of the Committee to take any action they please in this matter, and I do not know any better way we can take than by a motion to reconsider. And I think it is one of the means by which we can reach at the sense of this convention. It is as short a way, probably as any other.

Mr. NEWSOM. Cushing's Manual, which we take as an authority, in the absence of any special rule says:—

> 257—It is usual in legislative bodies, to regulate, by a special rule, the time, manner, and by whom, a motion to reconsider may be made; thus, for example, that it shall be made only on the same or succeeding day—by a member who voted with the majority, or at a time when there are as many members present as there were when the vote was passed; but, where there is no special rule on the subject, a motion to reconsider must be considered in the same light as any other motion, and as subject to no other rules.

Mr. THOMAS. If it can be done in the House there is no rule to prevent it being done in the Committee of the Whole. We may find something we desire to go back and amend.

The CHAIRMAN. I am in doubt about the rule, but I will put the motion. I am satisfied the motion is not in order.

The motion was agreed to.

The CHAIRMAN. The question now recurs on the motion of the gentleman from Douglas (Mr. Estabrook.)

Mr. ESTABROOK. Let me present this condition of affairs. There is no mandamus or any other kind of a damus to constrain the Legislature to do what it does not want to do. But we want to preserve consistency. The first part of this section is imperative. It requires that every scholar shall be educated as far as practicable. Now, let that be carried into effect, but let there be a discretion given to the Legislature in regard to others; and let that body refuse to act in the premises, and then, if this scholar is turned out of the public schools, I ask what will you do with him? You find, in some schools, when you compel the child to attend, you often have an incorrigible rogue of a boy, so bad as to spoil the entire school while present; so bad as to constrain you to expel him from the school. I ask now, my good friend the gentleman from Nemaha (Mr. Majors,) what are you going to do with that child?

Mr. MAJORS. We have just passed a resolution saying that this power shall be left to the discretion of the Legislature, as to sending such boys where it is practicable to send them. And all I ask in this matter is that you indicate it sufficient to give the Legislature the basis upon which to establish such schools; and then I am entirely willing to leave it to the future Legislature.

Mr. ESTABROOK. Then it will require us to change the word "shall" in the first part of the section. I understand the gentleman from Nemaha (Mr. Thomas) to say there are some districts where there are children living so far from school that it is impossible for them to attend. But in those regions where it is practicable; in those portions where you constrain them to send children to school, and you find an incorrigible boy whom you cannot keep in your school under ordinary discipline, I ask what shall be done with him? The Legislature has forborne to establish reformatory schools, while they have been constrained to establish the compulsory schools. You turn him into the streets, and will finally bring him into the penitentiary.

Mr. MAJORS. We will turn him over to that clause of the section where he is not educated by some other means.

Mr. THOMAS. I hope the word "shall" will be allowed to remain. It seems to me this leaves the matter in the hands of the Legislature to establish one or more reformatory schools, just as they may think proper. There certainly ought to be some reformatory schools in the State.

Mr. MAJORS. I am in favor of leaving it to the Legislature entirely. I think they will provide schools when necessary.

Mr. GRAY. I hope every gentleman will understand this before he votes. I am in favor of the word "may". So that the Legislature may, when the condition of the country requires it, establish these reformatory buildings.

Mr. WAKELEY. I move to amend the amendment by striking out the words "may establish schools," and inserting "shall establish a school or schools." The effect of this; as all will see, will make it obligatory on the Legislature to establish one, but leaves it discretionary whether it establishes more.

Mr. GRAY. I move an amendment to the amendment, or rather by way of a substitute, commencing after the word "and" as follows: "may when in its opinion, the condition of the State requires it, establish schols," etc.

The CHAIRMAN. Gentlemen. The question is upon the amendment offered by the gentleman from Dodge (Mr. Gray).

The amendment was not adopted.

The CHAIRMAN. The question now recurs upon the amendment offered by the gentleman from Douglas (Mr. Wakeley).

The Convention divided and the amendment was adopted.

Mr. McCANN. Mr. Chairman, I now move the adoption of section four.

The Convention divided and the motion was agreed to.

The Secretary read section five as follows:

Sec. 5. The Legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition, to all children between the ages of five and twenty-one years.

Mr. McCANN. Mr. Chairman, I move to strike out, in the 2nd line, the words, "be as nearly uniform as practicable and such school shall". The section will then read—"The Legislature shall provide by law for the establishment of district schools, which shall be free and without charge for tuition, to all children between the ages of five and twenty-one years." The object in this is: in our large towns it has been found necessary to make the schools differ very materially from those in more sparsely settled districts.

Mr. ESTABROOK. Mr. Chairman, I know that when the term has been used without qualification, requiring that the common schools shall be uniform, much difficulty has occurred; but here there is latitude and the discretion which is vested in the Legislature, is almost tantamount to striking the clause referred to out. That is to say, you shall not put up, in one place High school buildings, and in another place, in a more sparsely settled section, little log school houses. It seems to me that the trouble that has been experienced in other portions of the United States—I believe they have had considerable trouble with the term "uniform" in Indiana—will be of service to us. The section provides that the schools shall be uniform as to the books, the form adopted for teaching, etc., as nearly as possible throughout the State. If you had a school of low grade at one point of the country, it provides that you could not establish schools of a high grade in another part of the country. This section was copied bodily from the Wisconsin Constitution, and I know they had the experience of Indiana in view, when it was drafted. It seems to me that while it furnishes a wholesome rule, it does not restrain the Legislature.

Mr. McCANN. Mr. Chairman, The gentleman has stated this term has given trouble in the State of Indiana, and that is true. It has likewise given trouble in every State where it is used. The term has been stricken out of the school laws of Pennsylvania, Massachusetts and Indiana. I think every member here will agree with me that it is objectionable. The report contains very many valuable provisions, which will be of lasting benefit and honor to our State, but I do hope that we may get rid of this objectionable phrase. The Legislature will, no doubt, provide for the establishment of schools as this section provides, but they cannot be uniform throughout the State.

The CHAIRMAN. Gentlemen, the question is upon the amendment offered by the gentleman from Otoe (Mr. McCann) to strike out, in the 2nd line the words "be as nearly uniform as practicable, and such schools shall."

The amendment was not adopted.

Mr. SPEICE. I move that sec. 5 be adopted.

The motion was agreed to.

The Secretary read section six as follows:

Sec. 6. Provision shall be made by law for the equal distribution of the income of the fund set apart for the support of common schools, among the several school districts of the State, in some just proportion to the number of children and youth resident therein between the ages of five and twenty-one years, and no appropriation shall be made from said fund to any district for the year in which a school shall not be maintained at least three months.

Mr. MAXWELL. Mr. Chairman, I move to strike out in the second line the words "some just."

The amendment was agreed to.

Mr. STEVENSON. Mr. Chairman, I move that the section be adopted as amended.

The sixth section was adopted.

The Secretary read the seventh section as follows:

Sec. 7. No University lands, Agricultural college lands, common school lands, or other lands which are now held or which hereafter may be acquired by the State for educational purposes, shall be sold for less than seven dollars per acre.

Mr. MAJORS. I move the section be adopted.

The seventh section was adopted.

The Secretary read section eight as follows:

Sec. 8. All funds belonging to the State for educational purposes, the interest and income whereof only to be used, shall be deemed trust funds held by the State as trustee, and the State shall supply all losses thereof that may in any manner occur, so that the same shall remain forever inviolate and undiminished; and such funds, with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transferred to any other fund for other uses.

Mr. HASCALL. Mr. Chairman, I move its adoption.

The section was adopted.

The Secretary read the ninth section as follows:

Sec. 9. The location of the University and Agricultural college at the Capital of the State, as already established by existing laws, is hereby sanctioned and confirmed, and said institution is hereby declared to be the University and Agricultural College of this State; provided, that other Agricultural Colleges and experimental farms may be established by the Legislature when the wants of the people may so require.

Mr. CAMPBELL. Mr. Chairman, I move to strike out all after the word "State" in the first line, to the word "State" in the 3d line, and insert "shall be established" between the words "College" and "at" in the first line. That will be one amendment and the other is in the second part, to strike out the word "many" in the 4th line, and insert "shall" in the place of it; also to strike out the words "the wants of the people may so require," in the 4th and 5th lines and insert in lieu thereof the words "there are funds sufficient to support such colleges." I see no use of that law which was passed by the Legislature establishing this University. It is like the dragon seen in the vision by John, it has seven heads and one hundred horns. I don't believe there are enough boys in the State to establish a freshman class, and yet under that law the first thing that these regents did was to elect a Chancellor, who has been under pay from last June at a salary of $5,000, and other professors whose salaries amount to $13,000.

Mr. KIRKPATRICK. I will remind the gentleman that there are six colleges here instead of one.

Mr. CAMPBELL. Six departments, they are called, First, "College of Ancient and Modern Literature, Mathematics and the natural Sciences.

Second. A college of Agriculture.

Third. A College of Law.

Fourth, A College of Medicine.

Fifth. A College of Practical Science, Civil Engineering and Mechanics.

Sixth. A College of Fine Arts, and then it goes on to name the different departments. This is the dragon with seven heads and one hundred horns. There has only six horns appeared here yet as professors. My object is to establish Agricultural Colleges independent from the State university, and in every county, to teach our boys how to till the land

and how to take care of their children.

Mr. BALLARD. I wish to ask the gentleman if this is the first beast of that character he has seen or heard of in or about Lincoln?

Mr. CAMPBELL. Well I have never seen any.

Mr. ESTABROOK. I thought I had the book containing the act of Congress giving land for the purpose of Agricultural Colleges. It provides we shall erect a building within a given time out of our own funds, and the object of making this provision in the Constitution was to show that, within the time, we had complied with that law. Otherwise the time may have elapsed, it will elapse before by any possibility or chance or probability we can erect an Agricultural College building, so as to be within the meaning of that act. The language implied here is for the purpose of showing on the face of our Constitution that we had complied with the law, and within the given time built our Agricultural College building. Before we strike out anything we had better get the law of Congress. By prompt action on the part of the Convention we have rescued these lands. The object is to declare positively that the building erected as a College should be deemed the Agricultural College; and so established, so as to show that we had in good faith complied with the provisions of the acts of Congress. I see no harm done by declaring it so. I would not capriciously charge this unless some good result was to be attained. It is done in view of the explicit provisions of that act.

Mr. HASCALL. Mr. Chairman, I have had occasion to examine the provisions of the law of Congress in relation to this, and although I am not able to state at this time, the precise time we had to erect this building, still I am satisfied that it is too late to undertake to comply with the provisions of that act after this time; therefore we must consider the building already erected, which was erected in accordance with the law of the Legislature, as the Agricultural College. That being the case I think it highly proper this provision should be inserted in the Constitution, showing that we announce that building as our Agricultural College.

Mr. CAMPBELL. If I remember right, we are entitled to a certain quantity of land in proportion to the number of Senators and Representatives we have in Congress, and this law was passed as a necessity in order to carry out the requirements of Congress making the grant to the State. The time has passed for further action in that respect, therefore we should sanction this location and the erection of this building as the Agricultural College of the State. Afterwards we can build more Agricultural Colleges.

Mr. HASCALL. The point I made was this. The erection of this building secures the land to the State: it complies with the requirements of the acts of Congress, which gives us 30,000 acres for each of our three members of Congress. If the gentleman wishes afterwards to establish Agricultural Colleges and experimental farms in the different counties of the State, he has the privilege of doing so. So far as putting in a provision that we will build them when we get the money, I am not satisfied with a provision of that kind.

Mr. GRAY. I desire to offer an amendment to the amendment, that we strike out all after the word "State" in the first line to the words "is hereby" in the second line. The object, Mr. Chairman, of the gentleman from Otoe in making his motion I understand to be simply this—to get rid of adopting, or confirming, as it were, to make a part of this Constitution, particular acts of the Legislature establishing this university and Agricultural College, so that future Legislatures can regulate it as they see fit. That portion which I move to strike out only refers to the existing law on the subject. It still establishes the university and Agricultural College at the Capital.

Mr. STRICKLAND. I think there is some mistake in regard to this law. There was a law of the Twelfth Congress and a subsequent one, I have sent for the book and it will be here in a few minutes.

Mr. GRAY. This is another law,

Mr. STRICKLAND. I am speaking of acts of Congress which gave Agricultural Colleges scrip and afterwards made applicable by a special act, to the State of Nebraska.

Mr. GRAY. The law referred to here and the only one that is objectionable that the gentleman had in mind, is this, it is an act of the Legislature of this State approved February 15, 1869; and we find this section in it: "The several buildings of the university shall all be erected within a radius of four miles from the State House." It is a very strange law, and needs reformation and amendment very much, and for that reason I hope this Convention will not adopt this law and tack it to the Constitution; and place it in such a shape that hereafter, for all time to come, we shall labor under all the disadvantages that this law will place us under. I trust we shall strike out this portion of the section which seeks to tack this objectionable law to the Constitution itself. Not that I care anything about it, all there is about the laws of Congress on this subject is this, they grant certain lands for Agricultural purposes; it became necessary to establish an Agricultural College within a given time in order to get the benefit of that donation of land, and hence I think it is necessary at this time. I think the time is about up, and, maybe, is up already. I am satisfied it will, at least, be prudent for us to establish, by the Constitution, an Agricultural College. So I desire to retain that portion of the section which does establish and recognize the fact of an Agricultural College at the Capital. But the law relating to the university I leave that it may be amended.

Mr. McCANN. The law to which the gentleman has referred is no doubt the one passed July 2, 1862, granting lands for the erection of Agricultural Colleges. We have had a subsequent act since we have been a State, making that law of 1862, applicable to Nebraska. Four years of that time has already expired. We have only one year in which we can erect our agricultural building;

and we all know Mr. Chairman, that we do not propose to build an Agricultural College during that time, hence the object of this section is instead of calling this university building the university and agricultural college of the State of Nebraska; hereby securing the donation of 90,000 acres of land which have already been selected for this purpose. All that I understand section nine to aim at is "the location of of the University and Agricultural College at the Capital of the State as already established by existing laws." I do not understand that we fear anything detrimental to the interests of the University or Agricultural College which may or may not be in that act. It is already established, so far as location is concerned, and other Agricultural Colleges and experimental farms may be established by the Legislature when the wants of the people may so require. I hope, Mr. Chairman, this section may be re-adopted as it is. I care not what may have been the imperfections of the act of 1869; it will not hinder us in going on in the organization of our University and Agricultural College, as contemplated by the law of Congress, and thereby securing as I said before, the 90,000 acres to which we are entitled, and which have already been selected. We already have a building, and let us say we propose to use it for the purpose of confirming the location already made. That is all we wish to accomplish, as I understand it, in this ninth section, which gives the Legislature power to provide for the wants of the people as it may be required.

Mr. STRICKLAND. Let me call the attention of the gentleman to the law of Congress, of July 2, 1862. It enumerates the conditions, etc. Here is a section:

> Seventh. No State shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its Legislature within two years from the date of its approval by the President.

Now this condition is transmitted to the other act of Congress that related to Nebraska. But the meaning of the Committee, I understand is, in this well-worded article, that it shall embrace, as a condition, this college, and designate it as the college, showing that we have accepted the conditions of this act, and are thereby entitled to the land. From what my friend from Otoe (Dr. Campbell) and my friend from Dodge (Mr. Gray) say there is a wonderful proposition here. "The buildings shall all be erected within a radius of four miles of the State House." If we make the calculations upon the price we have set upon these lands, $7. per acre, we shall realize the sum of $630,000. Now, if we calculate it at what it will be worth in the future time you will have a million dollars. One of these Colleges might be wanted in Dakota; we might claim one in Douglas county. "The several buildings of the University shall all be erected within a radius of four miles of the State House." But, suppose you put your State House on wheels, and it goes West, will you follow it up with these buildings. I think there is something startling in the proposition of the gentleman from Dodge (Mr. Gray.)

Mr. TOWLE. Is there anything in the law which specified the time by which we must build an Agricultural College?

Mr. STRICKLAND. Yes. I will read the third sub-division of the fifth section of the act of Congress of 1862:

> Third—Any State which may take and claim the benefit of the provisions of this act shall provide within five years, at least not less than one College, as described in the fourth section of this act, or the grant to such shall cease; and said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the State shall be valid.

The wise provisions in this law are that you may build one college here, and another there, and scatter them about. But the Legislature unwisely grouped them. "The several buildings." There might be twenty. We have money enough to wall this city in with them. "All shall be erected within four miles of the State House." If you name this as one college, and then permit the State, in coming time, to locate other colleges, then I am in favor of the proposition. Otherwise, I shall be against it.

Mr. MAJORS. Does this section have reference to the adoption of the law entire, or simply the location as adopted by existing laws. I had reference, in the Committee, to the location. The section says "the location of the University and Agricultural College at the Capital of the State, as already established by existing laws, is hereby sanctioned and confirmed, etc." I do not think it necessarily follows, Mr. Chairman, that we confirm and adopt all the law the Legislature has made in connection with the location of the University here; but simply with regard to the locating of all these buildings here for ever. If it is of course I am opposed to it. But if it is simply the location of the present University as established by existing laws, that we confirm in the location here, I shall support the measure.

Mr. GRAY. My understanding, Mr. Chairman, is simply this—and I presume every lawyer on this floor will see it in the same light—take the words as here used; make that a part of the Constitution as it now is it refers right back to the act of our Legislature which is complained of by the gentleman from Otoe (Mr. Campbell), and which makes all the provisions a part of the Constitution itself. It takes the College as established, with all its machinery for its working, and under that law; and that law becomes a part of the definition of the institution itself. When it provides for three or four buildings scattered about within a certain radius, it takes that as the law provides; and no gentleman who examines that law, can fail to see that there are many objectionable features in the arrangement. All I seek to do is not to tie the hands of the people of this State by making an objectionable provision a part of this Constitution. It says the State shall recognize the existence of an Agricultural College; and I guess there is no question about it. But it is not necessary for us to recognize and confirm as a part of the Constitution, the law which regulates the

College. It is only a question of the location. We can recognize and establish that fact ourselves if we choose. But it is not necessary or proper that we attach this objectionable clause to the Constitution and make it binding on the people in all future time, but leave it where they can provide for its different departments; the number of its professors; its governor, etc.

Mr. STRICKLAND. Mr. Chairman, It seems as though, by inserting one word, this difficulty can be obviated. I think no one will say we should endorse this question of law, when it is so defective. I will read section 9:

"The location of the University and Agricultural College at the Capital of the State, as already established by existing laws, is hereby sanctioned and confirmed, and said institution is hereby declared to be the University and Agricultural College of this State; provided, that other Agricultural Colleges and experimental farms may be established by the Leglature when the wants of the people may so require."

We say the Act relating to this matter, was a local act passed by the Legislature. The act of Congress provides that "any State which may take or claim the benefit of this Act, shall provide, within five years, at least one Agricultural College" that is the way the law of Congress reads. Now we may have one College, or half a dozen. I say that this provision should not be adopted and unless this city of Lincoln is to be declared the Eternal City of this State we had better not place this matter in such shape that the Legislature will not be able to take action upon it.

Mr. HASCALL. Mr. Chairman, I take it upon myself—

Mr. STRICKLAND. (reading) "The several buildings of the University shall all be located within four miles of the State House"—

Mr. HASCALL. That relates to the University, and not to the Agricultural College. We undertake to explain in the Section what is meant by "the location." We say by this Section, that the location of one Agricultural College is already established—using a single term—and that that location is confirmed here. The latter part of the sentence makes it brief and clear and provides that "other Agricultural Colleges may be established by the Legislature, when the wants of the people may so require." This Section clearly contemplates, and says in so many words, that whenever the Legislature wants to establish Experimental Farms and Agricultural Colleges, they may locate them wherever the will of the people may indicate they want them located—in any part of the State. This location referred to here means only one Agricultural College. It is recognized, in this Section, as an Agricultural College as well as a University, and its location here, is confirmed by the Constitution. And the other part of the Section comes in to say that other Agricultural Colleges may be established by the Legislature, and they may establish them and locate them wherever they please. That is the natural inference. It is only proper we should confirm the location of this building here in order to comply with the provisions of the

Act of Congress. The gentleman from Otoe (Mr. Campbell) wanted other Agricultural Colleges located throughout the State and this provision says that the Legislature may establish other Agricultural Colleges throughout the State.

Mr. STRICKLAND. Mr. Chairman, I would like to explain to my learned friend from Douglas (Mr. Hascall) the inconsistencies of his arguments. He says the location of the University and Agricultural College should be ratified by the Constitution. Let us read from the Section "as already established by existing laws" and then a little further on it provides that other Experimental Farms and Agricultural Colleges may be established by the Legislature. Now, look at the inconsistency of this. We adopt a provision which says the location of the Agricultural College of the State, at the Capital of the State as already established by existing laws, and then make provision for several.

Mr. HASCALL. Mr. Chairman, The error that the gentleman falls into is—he is trying to make the provisions of the law a part of the Constitution. Now the law says we may establish other Agricultural Colleges, but that one College is already located and built, and we are asked to recognize and confirm this location. You must look at this section as a whole. The fore part of it merely confirms the location of the present Agricultural College and the latter part makes provision for other colleges. We proceed in the latter part of the section, to say that other colleges and experimental farms may be established. I think it is proper, and it is necessary that we have something standing to show that we have complied with the act of Congress. Now how does the learned gentleman from Douglas (Mr. Strickland) like this. He says the section is a plain contradiction; but I think I I have shown that it is perfectly clear and explicit.

Mr. McCANN. Mr. Chairman, I think I can offer a proposition which will be satisfactory to the Committee. I will read it:

The University and Agricultural College at the Capital of the State is hereby declared to be the University and Agricultural College of this State: provided that other Agricultural Colleges and Experimental Farms may be established elsewhere by the Legislature where the wants of the people may so require.

I will state that all ambiguity in the fourth line, is removed. I have inserted the word "elsewhere" in that line.

Mr. ESTABROOK. It may be claimed that the word "elsewhere" takes away all the ambiguity, but I think it adds to it. We have a law which provides that certain lands should be granted for the purpose of sustaining an Agricultural College and provides that in five years, after the State is admitted into the Union, at least one Agricultural College shall be established and also provides for the establishing after that of experimental farms. In 1867 the Legislature passed an act which seems to have escaped the observation of the gentleman. I will read it.

The State University and the State Agricultural College shall be endowed as one educational institution, and shall be located upon a reservation selected by the said commissioners, in said "Lincoln," or upon lands belonging to the State, and adjacent to the said town of "Lincoln," and the necessary buildings shall be erected as soon as funds can be secured.

It was a matter of considerable concern as to the method in which this College should be erected; but they hit upon this plan of combining it with the University, and located it at Lincoln, and sold Lincoln lots to assist in the erecting of the building. There seems to have been some doubts about whether it was meeting the provisions of the act of Congress. But they went on, all the time calling it the Agricultural College and University. and in 1869 an act was passed entitled "An act to establish the University." There have been acts of the Legislature touching the location of this Agricultural College and that location has been recognized as established. Now, what this section designs to do is, not only to say that the location is here: but that it is here under all these existing laws, showing that, commencing in 1867, immediately after the passage of the act, we have complied with the provisions of the act. We simply say in this section the location, not the Legislation, of the Agricultural College here, which was made in 1867 is sanctioned and confirmed. It is a mistaken view to claim that the law in reference to the University is included. One additional word, sir, in regard to the last clause. The act of Congress was passed in 1866 extending the provisions of this act over Nebraska; and under that we were expected, within five years, to erect one College, and in 1867 we did comply with that act in locating this University and College here. In any event there can be but one college, for the time has expired. Perhaps we may when we get more representation. By this section we say that the location of this College is confirmed to the United States government, baptized in 1869 and given a name; we now re-baptize it, and say that it is located at Lincoln.

Mr. STRICKLAND. I dislike to take up the time of this Convention, but Mr. Chairman, I am aware that no gentleman on this floor can use the English language to express his views better than my colleague (Mr. Estabrook). But sir, if I should should stand here all day with my eyes resting on a mule, and he should should try to make me think it was a horse he would fail. He says that this section only refers to the location of this college. The location is what we complain of. Let me read you—"the location of the University and Agricultural College at the Capital of the State, as already established." How established by existing laws? Read the eleventh section of the law, it says this: "The several buildings of the University shall be within a radius of four miles from the State House." And section thirteen "The immediate government of each college shall be by its own faculty." Now it is provided by Legislative enactment, that the location shall be here; that it is permanently located here, and within a radius of four miles. It shall forever exist. If this proposition is not true, then my head is worse at fault than I ever knew it. It does seem so plain. When we recognize the existing law what do we approve? The location. And that is what we complain of. It would be a very superior court indeed that would take any other view than this of it. I should say, unless my head is wonderfully at fault, with a mind wonderfully distorted to understand the plainest of English language, expressed in the plainest possible words.

Mr. TOWLE. It appears to me that the grounds taken by the gentleman from Dodge (Mr. Gray) and the gentleman from Douglas (Mr. Strickland) are correct. It further seems to me that this thing might be wholly struck out of the Constitution, that it has no business whatever there; and if there is any object in placing it in the Constitution it is for two objects—one forever and irrevocably fixing the Agricultural College at Lincoln, and the second of placing the funds which are hereafter to rise from the sale of these Agricultural lands out of the grasp of these regents of the State University. Gen. Estabrook spoke directly as to the location, and that it was to come within the Congressional law, and for that purpose this was placed in the Constitution. What is that Congressional law? It is, if we build an Agricultural building within five years, we shall be entitled to so much land. If the Legislature expresses its concurrence; if it shall afterwards build this Agricultural College and be entitled to the 90,000 acres, can we get it by locating an imaginary Agricultural College here? If it did say so what effect and what bearing would it have at Washington? There are certain conditions and regulations established, to be complied with before we can draw our Agricultural scrip. In the first place we accept the conditions of the Act and second have built a college. I do not believe you will find half a dozen States having within their borders what are termed purely Agricultural Colleges. They are all built with Agricultural scrip. Two or three years ago it was the bone of contention in Illinois and New York, whether they should build separate or different Agricultural Colleges, or whether they should call a certain college an Agricultural College. We have here a building. We find in it no Agricultural department. As I understand it, there is something in the law in relation to an Agricultural professorship; but I have not been informed that there is any. I believe it is in the provisions of the statute to make this showing to the United States, that we have built an Agricultural College. I do not believe it is in the province of the Legislature to show that we accept that act; because the language of the act plainly is that the Legislature must do it, and they have allowed two years to slip by. It is not the fault of this Convention; and if the two years have expired we cannot remedy it. We can make the showing that this building is an Agricultural College, and the lands will be issued, and we can build hereafter under this same fund and with the same money. I do not believe the people of this State wish the Agricultural

College to be located here, and I do not believe they are very anxious that the funds resulting from the sale of these lands should be irrevocably placed in the hands of this Board of Regents to spend.

Mr. McCANN. I wish to correct a statement made by my friend. He says other States have not given their Agricultural College lands to existing institutions. That is certainly an error.

Mr. TOWLE. I said there had not been half a dozen Agricultural Colleges built since the passage of this act. They have called other institutions Agricultural Colleges.

Mr. McCANN. That is what we are proposing to do to day. Those who have examined this matter will see that Connecticut, Rhode Island, New Hampshire, Delaware, New Jersey, Kentucky, Wisconsin, Minnesota, North Carolina, and California have erected buildings. New York gave her 90,000 acres to Cornell University, and Indiana to Purdue University. We affirm that this University of the State of Nebraska is a University and Agricultural College, in order to secure the 90,000 acres of land. Unless we do this we certainly fail to secure that land, it is a legal necessity.

Mr. GRAY. I desire to call attention to the motion we are now considering lest some have forgotten it; it is to strike out all after the word "State", up to and including "institution" in the second line. I desire also to notice very briefly the peeculiar argument of the two gentlemen from Douglas (Messrs. Hascall and Estabrook.) I understand them to say, that to take the section as it stands is nothing more than to adopt that portion of the law which locates the Agricultural College and University, and cannot be construed to adopt or attack the laws referred to in this section of the Constitution. Now these gentlemen must have examined this subject very hastily. How does it read? "The location of the University and Agricultural College at the Capital of the State, as already established by existing laws is hereby sanctioned and confirmed." What do the words "as already established" mean? It means in the form already established, and does not mean anything else. No court in the world could ever decide that it means anything else. Not the location merely, but the establishment of it. That is what it means, the establishment of it, the manner and form in which it is established, the number of professors, the buildings contemplated, all is included here, and made a part of this section itself. Everything pertaining to the establishment of institutions contained in those laws is here enacted and made a part of this section. And I defy gentlemen to take this up and construe it in the light of grammatical construction in the English language, or legal construction either. Let then take it up and look at it and they themselves will change their minds, "At the Capital of the State, as already established by existing laws, etc." Can you make anything else out of it?

Mr. PHILPOTT. I have listened to this debate with considerable interest. Some individuals appear to me to have indulged in debate without reflection, and while they have been talking I have been attempting to study. We have an Agricultural College. The act provides for the establishment of a University, and that University shall consist of six departments, one of which is an Agricultural College. I believe that University has been established, and along with it, the Agricultural College. Allow me to say that I do not concur with the gentleman from Douglas (Gen. Estabrook) as to this point that we must now confirm this; but regard this University as the Agricultural College, else we cannot hereafter erect another building. For this reason in 1866, Congress passed an act by which it is provided that territories coming into the Union as States shall three years afterwards, by their Legislature, declare their acceptance, under the act of Congress which amended the act of 1862. And within five years after that time, they must establish or build one Agricultural College. Now, we were admitted into the Union in 1867. In 1869, on the 12th of February, under the act of Congress of 1866, we accept the land grant within the three years. From that time we had five years in which to erect an Agricultural College. That was done on the 12th of February, 1869. And what did they do three days afterwards? They passed the act which provides for the establishment of a University for the State, and expressly provides for the Agricultural College. I think, under the Act of Congress of 1866, we have accepted the land grant. And it is provided that in that institution there shall be an Agricultural College. Has the Legislature placed them in a position to claim the Agricultural land? If not it would be well for the people to see to it that an Agricultural College be erected. I am of opinion we have an Agricultural College, and that it is here. As to the phraseology I differ from the gentleman from Dodge (Mr. Gray). If there is any doubt about it I now offer, as a substitute, this:

> "The location of the University and Agricultural College at the Capital of the State, as hereby sanctioned and confirmed, and such institution is hereby declared a University and Agricultural College of this State provided that other Agricultural Colleges and experimental farms may be established by the Legislature when the wants of the people may so require."

I have it precisely as the original section stands with the exception that in the first line I leave off the word "is", and in the next "already established by existing laws."

Mr. GRAY. I do not accept the substitute.

Mr. McCANN. I would ask the gentleman from Lancaster (Mr. Philpott) wherein his amendment differs from the one now under consideration. I hope that it will state that it is the University instead of a University.

Mr. GRAY. I will withdraw my amendment.

Mr. WAKELEY. I am not yet convinced that there is any necessity for this section reported by the Committee on Education, or any similar section. I have not investigated the law touching this subject. My information in regard to it is such as I have derived from this discussion of to day; but if the Legislation of Congress has been what is stated here in this debate, we certainly have ample time yet to provide by law, for the establishment of an Agricultural College. And we have no need for putting anything on that subject in the organic law. I find in the joint resolution of this State, accepting the Act of Congress of the United States, touching these Agricultural lands, this recital:

> WHEREAS: That by Act of Congress, approved July 23, 1866, entitled an act to amend the fifth section of an act entitled an act donating public lands to the several States and territories, which may provide Colleges for the benefit of agricultural and mechanical arts, approved July 2, 1862, so as to extend the time within which the provisions of said act shall be accepted and such Colleges established. It is provided that when any Territory shall become a State and be admitted into the Union, such new State shall be entitled to the benefits of said act of July 2, 1862, by expressing the acceptance therein required within three years from the date of its admission into the Union, and providing the college or colleges within five years after such acceptance as prescribed in said act. Now, therefore
>
> BE IT RESOLVED: by the Legislature of the State of Nebraska, that the said act of Congress of the United States, is assented to and accepted by the State of Nebraska, with all the conditions, restrictions, and limitations therein contained; and the faith of the State of Nebraska is hereby pledged to the faithful performance of the trust thereby created.

It is provided "that when any territory shall become a State and be admitted into the Union, such new State shall be entitled to the benefits of the said act of July 2, etc." This act of acceptance on the part of the State of Nebraska was approved February 12, 1869; and we therefore have five years from that date to erect or provide for the college which the Act of Congress requires. If the Act of Congress is correctly recited in this Act of our Legislature, it admits of no doubt but that our Legislature has until the 12th of February, 1874, to erect the college which entitles us to these lands. I would ask the Chairman of this Committee if he has so far investigated this subject as to state whether this Act of Congress is correctly recited. If that be so, Mr. Chairman, I am opposed to any constitutional provision on this subject, and while my own opinion is that we would only improve the location, and at this place, yet other gentlemen might think differently. Yet, lest we might be making this law perpetual by a Constitutional provision, I think we had better avoid any obligation, and make no provision in this Constitution upon the subject. I move to strike out the section.

Mr. McCANN. Mr. Chairman. In section 5 third paragraph, it is provided that in five years—

Mr. WAKELEY. Mr. Chairman. I would say to the gentleman that I was referring to the act of Congress of 1862,a subsequent Act was passed in 1866.

Mr. McCANN. The Act of 1866 provides distinctly, that within five years of the admission of the State to the Union, she shall provide for the building of an Agricultural College.

Mr. ESTABROOK. Mr. Chairman, I move the Committee do now rise, report progress, and ask leave to sit again.

Motion agreed to.

Mr. STEWART. Mr. President. The Committee of the Whole report that they have had under consideration the report of the Committee on Education, School Funds and Lands, and beg leave to report progress, and ask leave to sit again.

Adjournment.

Mr. LEY. Mr. President, I now move we adjourn until 9 o'clock tomorrow morning.

Motion agreed to.

So the Convention (at five o'clock and forty-eight minutes) adjourned.

EIGHTEENTH DAY.

Thursday, July 13th, 1871

The Convention met at 10 o'clock a. m. and was called to order by the President.

PRAYER.

Prayer was offered by the Chaplain to the Convention, Rev. L. B. Fifield, as follows:

O Thou who art ever gracious accept our morning thanks, although we know that we are unworthy yet we pray for pardon and ask for grace to help us. O Lord let us not wander past finding. Help us to remember the love we owe to Almighty God and the obedience we owe to the holy law. Amen.

Reading of the Journal.

The Journal of the last day's proceedings was read and approved.

Reports from Standing Committees.

Mr. WAKELEY. Mr. President, the Committee on Electoral and Representative Reform report and ask that the Clerk read the first paragraph of the report and the proposition accompanying the report, and that the further reading be dispensed with and the usual number be ordered printed.

The Secretary read as follows:

Mr. President. The Committee on electoral and representative reform have considered the general subject, together with such propositions as have been referred to them; and a minority of the Committee herewith report a provision, which they recommend be inserted in the Constitution.

In submitting this proposition for the consideration of the Convention we deem it proper to explain briefly our views of the principle and working of the proposed change in the method of voting for public officers in certain cases.

The theory of a purely democratic form of government is, that the citizens act strictly and individually in the control of public affairs. The body which legislates or decides is composed of the voters personally present and taking part in its proceedings. All may be represented and heard. While the majority controls, all may state, explain and advocate their views, and support them by their votes. The minority, thus represented, may, if it can prevail upon the majority to modify, or for good reasons, to change its views and action. Those in the minority in the beginning, together with those it may be able to gain from the other side, may become the majority in the end. In short, all citizens, whether few or many, may voice and influence according to their number, in controlling the common affairs. Ours is a representative government. Its legislative power is exercised by those chosen for that duty by the voters; its executive and judicial powers are wielded, and all its civil functions are performed by the selected agents of the people.

In such a government is is obviously right and just that the majority and the minority of the voters should each be able to select its due proportion of those who legislate for the whole, and of the agents who perform other public functions; or that there should be as near an approach to this result as is found to be practicable. Such a system should be adopted for selecting these representatives and agents of the people as will come nearest to giving both the majority and minority of the voters their respective rights. It may be conceded that a precise proportionate representation cannot be secured by any method yet devised. But it is equally true, that under the system of elections hitherto prevailing in the several states, and in the United States, not only has there been no just and fair representation of minorities, but there they have been to a great extent, and often wholly excluded from legislative bodies, and other public positions. To illustrate what is meant by this, let the system and result of elections of representatives in the legislature be examined.

The plan of dividing the State into certain small local districts from each of which one or more representatives are elected, has prevailed in all the American states. It may be assumed that this plan will be adhered to. Undeniably it would be just, as well as wholesome and salutary, that the principle already stated should be observed and majority and minority be proportionately represented in the legislature, if there be two parties in the State, one having two-thirds and the other one-third of the voters, they ought to have representatives in that proportion. So, descending to the subdivision of the State or district sending representatives, the party having two-thirds of the voters should choose two-thirds of the representatives, and the minority party should choose one-third. This would give to the majority its proper influence and preponderance, but no more.

Under the prevailing system such is not the result. The majority secures all the representatives voted for in the same district. If there be one thousand voters, of which the majority has five hundred and one, and the minority four hundred and ninety-nine, and there be two, three, four, five or whatever number of representatives to be chosen, the majority elects the whole; and if it happens that the same party has a majority, no matter how trivial, in each district it elects all the representatives from the entire State. It attacks the minority upon the military principle, in detail, and defeats it every where. This is a total overthrow of the true principle of representative government.

Consider the practical working of this system in a special instance. The county of Douglas now elects six representatives. Suppose in round numbers it had three thousand voters. If the majority party had even two thousand of these, and the minority say one thousand, the former would be justly entitled to select but four while the latter would choose two of the six representatives. Yet, the majority party, with but few more votes than the minority, secures the whole number.

That such results work a glaring injustice to minorities is a proposition which argument cannot make plainer. Let us inquire whether this is unavoidable. It may be said that necessarily it results from the recognized rule that majorities, under our form of government, must control. If this be so, the injustice must be borne. But we shall endeavor to demonstrate that it may in part, at least, be avoided without inconvenience or confusion.

The subject has engaged the attention of thoughtful men, especially within the last few years, and expedients have been suggested, and to some extent tried, for correcting the evil. Without alluding to all of them, or to any which do not seem to be applicable to our condition, we mention only two. One expedient is to permit no elector to vote for more than a prescribed number of candidates. For instance, if three representatives are to be elected from the same district, no person could vote for more than two. Therefore, a minority of more than one-third of the voters could elect one of the three representatives.

The other method, and that which seems to the Committee preferable, is what is termed cumulative voting. It permits each elector to give to any one or more candidates the whole number of votes which, under the existing system, he is compelled to distribute equally among all for whom he votes. If three representatives are to be chosen from one district, he may now give one vote to A, one to B and one to C; but he cannot give three to A, nor one to A, and two to B. By an arbitrary rule he is prevented from exercising his electoral power in the manner which he may prefer. If he votes with a minority he loses entirely the benefit of his votes by being compelled to attempt more than he can accomplish. His three votes, given one to each of the three candidates, are overcome by the votes of the majority cast in the same manner. If he could concentrate them upon one candidate, they would go three times as far towards electing him as the one vote he now gives, while in the aggregate he would exercise no more electoral power than he now does.

An individual with a lifting capacity of three hundred pounds will exert in [it] all to no purpose if he attempts to raise at once three objects altogether weighing eight hundred pounds. But, concentrating it upon one of them he makes it effective and accomplishes what he undertakes.

To illustrate the working of the change now proposed, take the case of the three officers to be elected at the same time by the same constituency. Suppose the majority party to have one thousand voters, and the minority five hundred, each elector of the minority casts his three votes for A, who receives fifteen hundred votes. The electors of the majority party can give only one thousand to each of three candidates, and only fifteen hundred to each of two candidates. In either event A will be elected and each party will secure its due proportion of the officers.

An easy calculation will show that in any case of choosing three officers by this system, a minority ranging from one fourth to anything less than one-half of the voters, will be able to elect one, giving it sometimes a little more and sometimes a little less than its exact proportion of officers, but always approximating closely to that result.

If the election be for more than three the same principle of course applies. In practice it will probably be more easily understood and applied in the case of three than of a larger number.

As applicable to the election of representatives in the legislature; where its justice and utility would be very manifest, it will not be necessary to extend it beyond three. By the simple plan of dividing the State into single senatorial districts, and of electing three representatives from each of these the minority, in nearly all senatorial districts, would secure one of them.

This system approved by a direct vote of the people of Illinois, to whom the question was separately submitted, when they voted upon the adoption of their new Constitution. The Committee recommend its adoption by this Convention, and feel confident that the people of this State will endorse and approve the action. Even this scheme will not give the minority its full share of the legislative power of the State, because the senators elected in single districts will still be chosen by the majority in each. The proposed plan contemplates that the majority, when it can, will at its option support three candidates, in which case the two having the highest number would be selected, or will support only two, each elector dividing his three votes equally between them, giving each one and a-half votes; or if he prefer to do so, giving two votes to one candidate, and one to the other.

If applied in the election of two officers a minority exceeding one-third could always elect one. This would of course exceed its due proportion, and the case would present the simple question, which comes nearer to right, that such a minority should be able to secure one-half the officers, or to secure none. The Committee are not prepared to recommend the extension of cumulative voting at present to the case of two officers.

In case of officers other than legislative, the operation of the system would be equally salutary. School boards, county commissioners and similar bodies should be thus chosen. There are forcible and special reasons for applying it to the selection of judges of election; and if it be decided to elect judges of the supreme court, the plan would be equally just and valuable, and from the State at large would prevent the entire exclusion from that high tribunal of fit men belonging to either party because only of their political faith. We have thus set forth the reasons for proposing this change in the method of wielding the electoral power of the citizens. We have not discussed it elaborately believing that the reason and reflection of the members of this body will apprehend and approve it.

We believe the system to be demanded by the principles and theory of our representative government. It does not invade nor impair the fundamental and traditional rule upon which our institutions are founded,- that the will of the majority fairly expressed must control. It gives to the majority all its rights. It yields to the majority its due and just preponderance. But it denies that a mere majority in the State, or in a district; has a right to elect all the representatives and thus wield the whole political power, or select all the executive, judicial and civil officers of the State or district; it asserts the right of minority to be heard and be represented in the legislative body,by a proportional number of those by whom its powers are exercised, and select its just proportion of those by whom other official trusts are discharged.

It is not a wholly new or unheard of suggestion. For many years leading and able men in other nations and in this country—so fertile in governmental reform—have defended and urged the principle. In our sister state of Illinois it was adopted, not by theorists or by politicians, but by the people. It is no political device or partisan scheme. The principle is general and permanent in its operation. The majority of this day may be the minority of the next, and need the protection of this just and equal rule. We are laying the foundation of a government not for ourselves only, but for coming times and for the whole people of present and the future.

E. WAKELEY,
ISAAC S. HASCALL,
B. J. NEWSOM,

Proposition.

At any election when three or more persons are to be elected to the same office by the same Constituency, each qualified voter may cast as many votes for any candidate as there are persons to be elected to such office, or may distribute the same, or equal parts thereof, as he may see fit, among the candidates not exceeding the number to be elected. The candidates highest in votes shall be declared elected; or if an equal vote for two or more having the requisite number, shall require it the choice between them, shall be made by lot.

The PRESIDENT. In order to save time we will consider this the first reading of the bill, and it will be read a second time by its title and ordered printed unless some gentleman objects. (No objection.)

Presentation of Resolutions.

Mr. HASCALL. Mr. President, I have a resolution I wish to introduce.

The Secretary read the resolution as follows:

RESOLVED: That each organized county in this State ought to establish and maintain a poor house for the relief and support of the poor and destitute persons of the county, and that a section should be inserted in the Constitution requiring the organized counties to establish poor houses for the purpose aforesaid.

Mr. HASCALL. Mr. President, I move the adoption of the resolution.

Mr. STEWART. Mr. President, It strikes me that that should be referred to some standing committee. The Committee on Penitentiaries and Reformatory institutions I would suggest.

Mr. HASCALL. The resolution calls for an expression of opinion from the Convention, it might be adopted and then referred.

Mr. SPEICE. I move that it be referred to the Committee on Reformatory institutions.

Mr. HASCALL. Mr. President, I do not think that is should be referred to that Committee, it might do if we were providing for criminals, but our poor people are not always criminals. Under the rule I think I have a right to move its reference to the Committee on Counties, that being the most appropriate one.

Mr. KIRKPATRICK. I think we should allow the resolution to go to the Committee the gentleman desires it to go to.

Mr. HASCALL. I wish to say there is no bunkum about this resolution. It is a lamentable fact that several counties in this State have failed to do their duty. Some county authorities have even been so near as to ship the poor out of their counties, have kicked them over the county line. I do not know how it is with the gentleman from Platte (Mr. Speice.) If they all maintain the same sentiments as he does, I judge his county would banish the poor from its borders.

The PRESIDENT. The question is on referring to the Committee on Penitentiary and Reformatory Institutions.

The Convention divided and the motion was not agreed to.

The PRESIDENT. The question now is on referring to the Committee on Counties.

The motion was agreed to.

Mr. LYON. I have a resolution.

The Secretary read the resolution as follows:

RESOLVED: That no spirituous, vinous or fermented liquors shall be sold in the State except for medicinal and mechanical purposes.

Mr. LYON. I move its reference to the special Committee of which Mr. Philpott is Chairman.

Mr. HASCALL. I move to amend

by saying "medical, mechanical and for the purposes of navigation."

The ayes and nays were demanded.

The Secretary called the roll and the President announced the result—yeas 34, nays 13— as follows:

YEAS—34.

Abbott,
Ballard,
Cassell,
Curtis,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
McCann,
Majors,
Mason,
Maxwell,
Moore,
Myers,
Neligh,
Newsom,
Philpott,
Price,
Reynolds,
Robinson,
Scofield,
Shaff,
Sprague,
Stewart,
Thummel,
Thomas,
Tisdel,

NAYS—13.

Boyd,
Campbell,
Hinman,
Ley,
Manderson,
Parchen,
Speice,
Stevenson,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,

ABSENT OR NOT VOTING—5

Eaton,
Grenell,
Parker;
Woolworth,
Mr. President.

Mr. ESTABROOK. I have a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Committee on State Institutions and Public Buildings be instructed to inquire into the expediency of providing an executive mansion at the seat of government and the probable cost thereof.

Mr. ESTABROOK. I move the adoption of the resolution.

Mr. HASCALL. I would like to have the mover explain the merits of this resolution. I know it is a very important matter to the State and one that should receive due consideration before we vote.

Mr. ESTABROOK. The resolution is simply one of inquiry. In the Executive Article we voted by a large majority that the Governor and other officers should be compelled to live at the seat of government. He is supposed and expected to be the embodiment of hospitality of the State, and if he be compelled to live here, it would not be unreasonable to find him some place to reside, where he shall receive those who come here and it seems to me to be the proper time now, before we consider further the Executive Article, we may have the amount of salary somewhat in view. I say this in addition. There are many houses erected in the vicinity of the Capitol, which I know as a matter of law to my own satisfaction, stand today upon the property of the State, are indeed, as a matter of law, the property of the State, standing upon ground never conveyed from the State by any proper conveyance, and I think I may be indulged in a single remark, that there is a very pleasant edifice near, which would be a very proper house wherein the executive might reside. And is there any reason why this shall not form a subject of inquiry through the standing committee? I would like to know the reason why. We need not adopt their views if it is different from what we believe is correct. It interests me and I know it interests others.

Mr. WILSON. It would seem to me in making this inquiry about the cost of this mansion he speaks of, that it is not the intention of the gentleman who offered the resolution to make this inquiry. He and others desire to steal a certain man's property by some point of law. It seems to me the gentleman from Douglas (Mr. Estabrook) has been aiming at this from the commencement of the Convention; and I will raise my voice against this so long as I have a breath.

Mr. MYERS. Mr.. Chairman, I have a strong inclination to support this resolution. My inclinations run that way; and I am anxious that measures of this kind should always be favorably considered where the property and interests of the State are concerned, and where they are are so vitally concerned as they are in this. If the State has any legal hold upon property that has been wrongly taken, let us seize it and return it into the coffers or possession of the State, where it properly belongs. If there are any legal points in it, those legal points, I want the gentleman from Johnson (Mr. Wilson) to understand are against the thieves and plunderers, and the band of robbers who have concentrated their forces within the limits of this town while their masters were absent. While those who had the power were at their homes these robbers were in this town, plundering the people of this commonwealth without limit or stint. And if we can recover this property let us, as a matter of justice to the taxpayers do it, and do it effectually; and make an example of these gentlemen who have practiced these great wrongs against the State. Now, I have some doubts about the expediency of erecting any new buildings on behalf of this State. "History is philosophy teaching by example;" and the people of the State ought to bear this in mind, as they look upon the past. Every building we have had occasion to erect here on behalf of the State, is either a rotten pile of boards or crumbling stones, everyone of which has cost the people several dollars. And they have crumbled to ashes, or the torch of the incendiary has been applied, and the State robbed in that way. I am afraid to embark in this scheme of building at this day. I would rather leave it to a future generation. The Governor is the people's servant, and is entitled to our esteem and gratitude; but I am afraid of building residences now, when we are surrounded by these extraordinary embarrassments; when there are hundreds and hundreds of persons around us, lean and hungry, who have plunged their hands deep into the school funds, and put them in their pockets without limit, I will stand up for the people of this State. And not another dollar will I vote to squander upon these irresponsible individuals; and I want that to go forth as the dictum of the honest tax payers of this State. If those monies and properties and lands had been honestly appropriated to the purposes for which the Legislature of the past had given them, I, sir, would have been the last individual to open my mouth upon the subject; would have been the last to enter a solemn and last protest against the plunderers. For the purposes of recovering this property, if we can, and we have the legal right to do it and I want the constituents of the gentleman from Johnson (Mr. Wilson) to understand this—if we can recover this property, I will support it. Because our first duty and obligation is due to the State. The State is our own creation: she is entitled to our endeavors to protect her; and help her regain possession of every inch of this ground which has been illegally wrested from her. I shall vote for this resolution; and I hope we shall have a solid stone, which shall be immovable, inserted in this Constitution; and which shall close the door forever against these plunderers. The people have put us here as custodians of their treasury, and we are, as honest men, bound to preserve their interests; and there can be no better way that the putting guards around your treasury. And no individual, in the absence of your law makers, can then seize this property. Sir, that is the time people come, by bayonets and revolution. For these reasons I hope the resolution will be adopted.

Mr . WILSON. Mr. President, I would like to ask, for my own information, of the gentleman from Douglas (Mr. Myers) whether this is an investigating Committee, or a Constitutional Convention? Whether we are here to investigate the acts of the last official officers of this State, or to frame a Constitution.

Mr. MYERS. I will with pleasure, answer the honorable gentleman. I believe this is not an investigating body, but all that we need upon the subject is pasted high upon the walls. It needs no investigating. All that remains now is to close the door with the light that we have. And God knows it is horrible enough!

Mr. ROBINSON. I do not know since I have heard the resolution read, that I am opposed to it. But it strikes me this discussion has taken rather a singular turn. A day or two ago, when a certain resolution came up here providing for the admission of a certain gentleman to privileges of this floor, I voted for its indefinite postponement. I thought it inexpedient at that time to introduce into the discussions of this body the questions which were likely to arise out of that resolution. Mr. President if there is anything that I despise it is the history of the past year in this State. "Tis my perfect scorn." "Object of my unplacable disgust." But in my view there are some other things still more despicable. That disgraceful fight is a dirty carcass. It stinks everywhere; enters into the discussion of every little public meeting and befouls them all. I am sick and tired of it. But sir, the one thing more disgusting than this foul carrion is the dirty dog that drags it into public notice to offend the nostrils of decent people. I hope the gentlemen who brought up this resolution will not put themselves out of order in the discussion of it. I do not wish to take part in such a discussion; but I can tell the gentlemen I do not fear to do so if it becomes necessary. This resolution is not necessary, and I hope gentlemen will not force it upon the discussions of this body.

Mr. ESTABROOK. I did not fully understand, as I was talking with the colleague of the gentleman at the time, what he means about forcing. I imagine there is no question at all but that there are public funds invested in buildings in the vicinity here. But there have been public moneys invested in buildings here and lands, wherein little has been effected by, at least, informalities. Now, if by a proper and reasonable negotiation with the parties holding such properties the whole thing can be effected without process of law, what harm is there? Why these gentlemen are sensitive. It is an old adage "When the Devil howls you know something is striking him." By an informality of the law the State has been stolen from. Who is the thief? We propose, by a quiet, unostentatious resolution to inquire whether we may not secure our executive mansion and get back what belongs to the State. Who is dragging anything into discussion, except what is legitimate—genuine; to the topic? I am talking of a school fund, which has, in some degree, been expended. Is that germane or not? And it cover a portion of that which the State has had filched from it. If anybody wants to engage in dragging the thing I suppose it can be discussed. I do not propose to do it though, any more than that the State has its funds scattered in every direction; and it may be necessary to gather these scattered funds in again in such a way as will benefit the parties concerned. If it is an offense I do not know. I do not say how it should effect the feelings, or induce the gentleman from Johnson (Mr. Wilson) to refer to me offensively. It seems to me as though something was stinging or sticking him.

Mr. MASON. Mr. President, when the vote was taken upon this resolution before, I did not vote, for the reason that I was not in my seat, but I thought that the resolution was clearly lost; if the gentleman from Douglas states that the object of the resolution is to secure the State any property to which it has a right, I am for the resolution. If the object is simply to enter upon another scheme of erecting public buildings, I am opposed to the resolution. I do not believe, sir, it advances the objects and purposes of the government to engage in the erection of mansions, or the erection of other buildings except such as are necessary for the transaction of its business; but if the State, either honestly or dishonestly has become interested in private mansions, and it is necessary to take this step in order to secure that interest, then I think the resolution is right, now if the gentleman from Douglas (Mr. Estabrook) had said that the State might repossess its property, which it is in danger of losing, then I certainly would be in favor of it, but if its object and purpose is, in the language of my friend sitting behind me, "to raise again the old war" and drag what has been settled by the highest judicial tribunal in this State before this Convention, Mr. President, I have much to say against it. I don't believe it is germane for this Convention to review the judgment of the highest court in the land, this is settled; it is decided, and let it end, I see that broad insinuations of theft and robbery of the school are thrown out by the gentleman from Douglas. Why, sir, if I believed the facts stated by that gentleman to be true, I would be man enough to go before a justice of the Peace, make the proper affidavit and drag the felon to the bar of justice instead of accusing him before this Convention, where he cannot be heard in his own defense. If these assertions are true let the felon be punished. Show me that any man hath plundered me, or taken the property of this State—convince me of it and before I stand in this Convention and assert it, I will make the affidavit before a magistrate which will bring that man to justice. If the gentleman from Douglas (Mr. Estabrook) had said to me "I believe there is property here which the State is entitled to, and which the State can recover by means of this resolution," I should have favored its introduction, but this assault upon our late State officers is like the assault the gopher makes upon my hedge now—it is working under ground. I never yet threatened a man through his constituency; and when a man threatens me in this way, he either reflects upon my integrity or doubts the intelligence of that constituency. Now, Mr. Chairman; If there is any chance for the State to take possession of this residence spoken of I have no objection to its being done, but if the object of this resolution be to enter upon another scheme to erect public buildings, then I ask the Convention to pause and consider. The gentleman from Douglas (Mr. Estabrook) says that philosophy was but the experience of mankind aggregated in history, all experience shows that it costs a government $1,000 for every hundred dollars realized in the value of buildings, this much over what it would cost a private individual. An individual will build for one tenth what it would cost the State. Let me inquire if it is the object of the resolution to put up public buildings.

Mr. ESTABROOK. Mr. Chairman, I will state to the gentleman that the resolution means just exactly what it purports to mean. It never became a subject of very close thought, the matter came up in the discussion of the subject at the suggestion of Mr. Cassell. I will say that I think it is not of enough note to cause this "tempest in a tea pot."

Mr. MASON. Mr. Chairman, I don't think that answers the inquiry at all. I wish to ask whether it is to inquire into the propriety of taking possession of certain property, or to build other houses.

Mr. ESTABROOK. Mr. Chairman, I would say that I think it appears to cover the whole ground.

Mr. MYERS. Mr. Chairman, I too am in the dark. I am, as I heretofore remarked, opposed to engaging in the erection of any new buildings at present. I advocated this resolution, it is true. I am not afraid to show my hand, I am never disposed to shirk a responsibility. I want the gentleman from Otoe (Mr. Mason) to understand that. I want to know whether this resolution was not gotten up for the purposes of restoring to the State the property of the State—mansions in which the State material entered and built, in which the State money is invested. If this property cannot be recovered, then I am in favor of inserting a clause in the Constitution which will prevent a repetition of these stealings in the future. Philosophy is history teaching by example and God knows we have had example enough of that kind. I simply want to vote for this resolution in the hope of recovering property lost.

Mr. CASSELL. Mr. Chairman, I will state in explanation of this resolution that there are two or three objects in view. The first is to secure a residence for the State of Nebraska, the second is, to be plain about it, to see if a debt cannot be recovered which some claim the State has no proper security for, and if we can get this property in part payment of the debt it is thought better to secure it. Perhaps the thing can be done, and we will have a good residence for our Governor.

Mr. WAKELEY. Mr. President, so far as I am concerned it is entirely immaterial what might have been the purpose in offering this resolution. I think it is simply what it expresses, an instruction to a committee to inquire into the expediency of erecting a residence for the Chief Executive, and report the probable cost of the same. I shall support the resolution cordially because it clearly indicates that the Governor shall reside at the Capital, and if it is necessary I am in favor of the Legislature providing a suitable residence for him here. For if, as hinted at by my colleague, if we require the Executive to reside here it supposes that he shall extend the usual hospitalities to those who visit him, he ought to have a suitable residence here. It is simply a resolution of inquiry and of course this report will bind no body. The Convention will be entirely free, when it is submitted, to express its opinion on the whole subject, as it has been suggested in accomplishing this the State may recover any funds that it has lost, it will be well.

The PRESIDENT. The question is on the adoption of the resolution offered by the gentleman from Douglas (Mr. Estabrook). The "ayes and nays" have been demanded.

The vote was taken and the result was announced. Ayes, 39. Nays, 4—as follows.

AYES—39.

Abbott,
Ballard,
Boyd,
Cassell,
Curtis,
Estabrook,
Gibbs,
Granger,
Griggs,
Hascall,
Kilburn.
Lake,
Ley,
Lyon,
McCann,
Majors,
Mason,
Manderson,
Maxwell,
Moore,
Myers,
Neligh,
Newsom,
Parchen,
Philpott,
Price,
Reynolds,
Robinson,
Shaff,
Sprague,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Vifquain,
Wakeley,
Weaver,

NAYS—4.

Campbell,
Hinman,
Kenaston,
Wilson,

ABSENT OR NOT VOTING—6.

Eaton,	Mr. President,
Grenell,	Scofield,
Kirkpatrick,	Woolworth,

So the resolution was agreed to.

Committee of the Whole.

Mr. MYERS. Mr. President, I move that we go into the Committee of the Whole on the report of the Committee on Education, School Funds and Lands.

The motion was agreed to.

So the Convention in the Committee of the Whole, Mr. Stewart in the Chair, proceeded to consider the report of the Committee on Education, School Funds and Lands.

The Secretary read section nine as follows:

Sec. 9. The location of the University and Agricultural College at the Capital of the State, as already established by existing laws, is hereby sanctioned and confirmed, and said institution is hereby declared to be the University and Agricultural College of this State; provided, that other Agricultural Colleges and experimental farms may be established by the Legislature when the wants of the people may so require.

The CHAIRMAN. Gentlemen of the Committee, the question is on the amendment offered by the gentleman from Otoe, (Mr. McCann.)

Mr. McCANN. Mr. Chairman, I understand on examining the Acts of Congress of 1862 and a subsequent one of 1866, that it is the opinion of legal gentlemen in the convention that we still have until 1874 to build an Agricultural College in compliance with that Act, and I understand that it is the opinion of the gentlemen, it will be better to strike out this section altogether. If such a motion is made I have no objection. I do not believe it wise nor necessary, I do not believe it best, but if it be the opinion of the Convention I have no objection. It may just as well be done to day. The building is already built, not only for a University but for an Agricultural College. We all know the people of this State will not sustain this Convention or a future Legislature in erecting a large Agricultural College in which to place five, ten or fifteen boys. We all know it is economy. In our private affairs we would so decide. Other Agricultural Colleges might be located elsewhere throughout the State, until that time arrives we all understand that this building is to be used as an Agricultural College, and that it is best to denominate it the University and Agricultural College. Secondly, I can see no wisdom in deferring this matter. I know the opinion of the Secretary of the Interior. He asked me if we had built an Agricultural College, I answered him that we had. I told him we were going to use it as a University and Agricultural College, but I think it would be well to recognize it as such, with this proviso, that whenever circumstances will allow, Agricultural Colleges be located elsewhere throughout the State.

Mr. PHILPOTT. I have an amendment before the Committee and wish to ask if it was recognized.

The CHAIRMAN. I did not recognize the amendment. The amendment before the Committee is Mr. McCann's, striking out the first three words and also striking out the words "as already established by existing laws, is hereby sanctioned and confirmed and said institution."

Mr. PHILPOTT. I am in favor of that amendment. I have no doubt the adoption of the amendment would recognize the selection of this building at this place. In a remark I made yesterday on this subject, I believed it was true that we had yet four years to erect a building. I wish to say this that I was then looking after what I believed to be the interest of the State at large. I wish the matter considered whether we have a building or not, if not one might be erected. I gave it as my opinion that we had complied with the spirit of the law of Congress, under which we are entitled to 90,000 acres of land, that by the location of the University making one of its departments an Agricultural College we have complied with the spirit of the law and that we have not only the University located but the Agricultural College. If I was wrong in that and it was not true, I desire the matter located that there may be no doubt about it. While I represented the constituency of Lancaster county and the people of Lincoln, I regard Lincoln as one thing and the Capital of the State as another. I believe Lincoln is owned in part by the State and citizens who have property here, and that the Capital is owned by the whole people. I may have some pride in looking after the interests of this county. I have likewise just pride in the interest of the State. Lincoln in every sense of the word is the Capital, but I remember Lincoln is a town governed by civil ordinances, and the people of the State have been pleased to call Lincoln the Capital. It is just and proper to the people of this State, that the Agricultural College and the State University located at this place should be recognized. Why not recognize it by virtue of the Constitution at this time. We have a large Agricultural district, a University, means of communication by way of railroads, and I think this is a most favorable place for the location of one Agricultural College. I urge the recognition of the location at this time in this city for this reason. It has been intimated that we will not be in a condition for three or four years to put up a large expensive Agricultural building. If it should be regarded necessary to erect one hereafter, it certainly would cost a considerable amount of money, and if it is true, and I have no doubt that it is, that we have complied with the spirit of the law. Why not recognize the building already erected and thereby show that the whole people of the State believe that we have complied with the spirit of the law; they then will say the people believe they have complied with the spirit of the law, and that they have erected a building for that purpose. I urge on this Convention at this time the recognition of the Agricultural College, here, that the people when voting on this Constitution may affirm that recognition, and that is one strong reason why I hold it should not be stricken out. The gentleman from Dodge (Mr. Gray) seems to have been laboring under the impression that we recognized that whole law under which the State University has been erected, located and constructed and all the provisions for its management. He seems to have some objection to that law, perhaps many others have. I do not wish to do anything at this time for the recognition further than the location of this building. Perhaps we are not satisfied with the wisdom of the Legislature that enacted that law. I cannot see why he objects to the amendment. I think it proper we should have that building here, one of them, and others elsewhere where they may be needed.

Mr. BALLARD. I move to strike out section nine, for the reason that we should not encumber this Constitution with needless provisions.

Mr. ESTABROOK. I rise to a point of order. I think it is a principle of parliamentary law that we first consider the amendment and then consider the motion to strike out.

Mr. BALLARD. I make it as an amendment to the amendment.

Mr. WAKELEY. It seems to me rule 26 settles that question.

Mr. MYERS. Mr. Chairman, I hope I will now be permitted to vote on this amendment and this section; and that no gentleman will be allowed to motion to strike out until the ayes and nays have been taken. I hope the gentlemen now, having thoroughly understood and debated this question, will permit this Committee to vote.

Mr. THOMAS. I desire to say that a motion to strike out does not take precedence of a motion to amend.

The CHAIRMAN. That idea will conflict with rule 26.

Mr. WAKELEY. The ruling of the Chair, in my judgment, is correct in regard to the motion having precedence. Because it seems to me it is fair for gentlemen to let it be perfected as far as may be, and when perfected, it may not be objectionable to those now in favor of striking out the whole subject. Therefore, I shall vote against striking out now, but allow it to be perfected first.

Mr. BALLARD. I have no objection to withdrawing it, yet I want this section stricken out.

The CHAIRMAN. Gentlemen, the question is on the amendment of the gentleman from Otoe (Mr. McCann).

The amendment was agreed to.

Mr. MYERS. I move the section be now adopted as amended.

Mr. TOWLE. Mr. Chairman, I move to strike out the section as amended.

Mr. MASON. Mr. Chairman, I want to make an inquiry of the chairman of this Committee. I desire to enquire what the object of this section is. Does it refer to this building down here?

Mr. ESTABROOK. I will state if the gentleman from Otoe (Mr. Mason) is not familiar with the Act of Congress donating the land to the State that under its provision it became necessary in order to authorize us to demand and receive 90,000 acres of land for Agricultural College purposes, within a certain length of time we should erect a college building; that provision was made in 1867 to erect a university and agricultural college, and in 1869 some other provisions were made recognizing the double capacity of the building, and the object of this was to recognize the action that had gone before, which established the college here, clearly and decidedly; so that it might be shown that we had regarded it as an agricultural college, and brought ourselves within the provisions of the act and complied with the provisions upon which the grant was made. That was the idea intended to be shown by the section.

Mr. MASON. In other words, it is to say to avoid doubt.

Mr. ESTABROOK. Yes.

Mr. McCANN. Mr. Chairman, I rise to a question of privilege. My colleague, (Mr. Mason) has asked for information from the chairman of the Committee reporting this article. Believing that the chairman has failed to respond in all the particulars, I wish to call the attention of my colleague to one further objection urged against this article yesterday.

Leave granted.

Mr. McCANN.. I understand that the objection to this Article yesterday was this: that in adopting the Article we thereby confirm the Act of the Legislature of 1869, locating or establishing a university and agricultural college. Serious objections were urged against that Act in itself. I, in framing this amendment, think we have obviated that, and that now, in adopting this Article as amended by the Committee, and as now before the Committee, we declare it an Agricultural College as well as a University. Thereby we fulfill all the requirements of the Act of Congress and come into the possession of the 90,000 acres of land.

Mr. THOMAS. I would like to ask Mr. McCann if the statute establishing this university and agricultural college does not establish it as an Agricultural College; and if it does is it necessary that there be a Constitutional provision also declaring it an Agricultural College? If it is necessary to put this into the Constitution for the purpose of saving any land, I am in favor of keeping it there but if not, I am not desirous.

Mr. McCANN. I would state, for the information of the gentleman from Nemaha—and I am obliged to him for making that point—that your act reads "An Act for the purpose of establishing the University of Nebraska." If this is not the act we have been fighting since 12 o'clock yesterday, I stand corrected. I hold if it is not you have been fighting a myth. I hold that the act establishing this is the act to establish the University of Nebraska; and I hold that before you receive the patent for the 90,000 acres you have to declare some building a University and Agricultural College.

Mr. THOMAS. I believe the act alluded to by Mr. Philpott referred to a different one.

Mr. McCANN. I wish further to state, so far as the other act is concerned, the matter referred to the act of 1869—

Mr. PHILPOTT. One act I referred to yesterday—

The CHAIRMAN. The gentleman from Lancaster (Mr. Philpott) is out of order. If leave is granted he may speak.

Mr. MASON. Mr. Chairman, I think it important that we act intelligently upon this matter. I hope the gentleman from Lancaster will have permission. I desire to have sufficient time to examine the law.

Leave was granted Mr. Philpott.

Mr. PHILPOTT. I was about to say that one act I referred to yesterday was the one Mr. McCann has been referring to, and can be found in the Laws of Nebraska, for 1869, page 312. Now, in reference to the act on page 175, it provides for six departments, separate departments, in the University—

— — —We have nothing to do with the departments.

Mr. PHILPOTT—One moment. The first is a college of ancient and modern literature, mathematics and the natural sciences; and the second, is a college of agriculture. Now, what we are required to do by the Act of Congress of 1866, was first—that, within three years after the State was admitted into the Union, she accept the grant of 90,000 acres of land; and within five years after such acceptance—erect an agricultural college. Now, we have no Agricultural College; nor will we have the money to expend in the next four or five years. Unless it is true that in this University we have an agricultural college, in the second department—that is what the law says—"the University shall consist of six departments"—and each one is a college, and the second is an agricultural college—if that is true, we have complied with the law, and need not build within the next four years. And, again, we have not the money to lay out in the other building. It would be eminently wise and just for the Convention to recognize that department as one of the agricultural colleges of this State. Then there is no doubt about the question. And that is the point I urge here. If you cast it off entirely, then you will have said to Congress, "We have not complied with the law." If we don't adopt something of this kind, when we make application for our land grant, Congress will say "put up your building and comply with the provision of the act." I say it will be cheapest to recognize this building as one of our agricultural colleges.

Mr. BALLARD. Mr. Chairman, this ground seems to have been pretty thoroughly discussed, and I think this discussion is out of order.

The CHAIRMAN. Gentlemen, the question is upon the motion to strike out section 9 as amended.

Mr. MASON. Mr. Chairman, I would like to say a word farther. I was under the impression that if the section passed it would recognize the action of the Legislature with respect to the location of this university and agricultural building as constitutionally done, and irrevocably fixed, and to that, I was opposed. Upon a more thorough examination of this section, I find the section does recognize only the location of this as one of our agricultural colleges, fixes that by the Constitution and does nothing more. Then it is well to see what has been done under the act of the Legislature referred to by my colleague, the gentleman from Lancaster (Mr. Philpott) I read from page 254 of 1869—section 2: "And that the residue of the moneys arising from the sale of lots as aforesaid not exceeding the sum of one hundred thousand dollars, be and the same is hereby appropriated, to be expended under the direction of said Commissioners in the construction and erection of a suitable building for a State university and agricultural college, upon the grounds on or near the town site of Lincoln heretofore selected, or to be selected by said commissioners and laid off for that purpose, **PROVIDED**, that if a sufficient amount is not realized from the sale of lots as aforesaid, from which to appropriate as aforesaid $100,000 to build the State University and Agricultural College. The said commissioners may sell in the same manner, to the highest and best bidder, a sufficient amount of saline lands, not exceeding 40 sections at a price not less than $5 per acre to make up the deficiency, **Provided Further** that said lands shall not be selected for such purposes from any section or part of a section on which any salt spring may be located, or a section adjoining the section on which said salt spring may be located."

We have a recognition of the agricultural college and university and if it be the sense of the Convention to simply recognize the location and erection of an agricultural college at Lincoln, then we ought to adopt the section, as reported by the Committee. For my own part, I believe I am in favor of recognizing as the agricultural college of this city, this building over here in this oat field; but I want to see our agricultural college surrounded by broad acres upon which to experiment. Now it is true this section provides for the erection of other agricultural colleges, but when we build an agricultural college I don't believe in planting it in anybody's town. I want it where they can plant trees and have broad acres for practical experiments, in order that the poor men of our State may gain thereby, and save the large sums which many of us, in the early settlement of our State, have lost heretofore in experimenting. For the purpose of securing our lands, I am in favor of letting this section stand and call this an agricultural college, but I am not in favor of calling it, by Constitutional provision, the agricultural college of this State.

Mr. ESTABROOK. Mr. Chairman, I will call the attention of the gentleman to the fact that the law provides for the using of 10 per cent of this fund for experimental farms.

Mr. MASON. Mr. Chairman, I want lands around our agricultural colleges, as well as these experimental farms. I wish my boy to go from the field with sweat still on his brow, to his books. I would take him from practical farming—from the planting of trees, from the planting of crops—to the school room; from the toil of the muscle, to the toil of the brain, and for that reason I would have my building upon a farm. Therefore, I am for the planting of our agricultural college—not in Lincoln, not in Nebraska City, not in Omaha, not anywhere except in the country which God has made, and the farmer is to inhabit. These being my views, I believe I am in favor, Mr. Chairman of striking out the whole section.

The Convention divided and the motion to strike out section nine was agreed to.

Mr. McCANN. I desired a division, in order that we might know who it is that votes to strike out this section, for I am satisfied the time will come when those voting in the affirmative, will regret their action.

Mr. MASON. Mr. Chairman, I desire to say to the gentleman that if there is any doubt about our receiving the land, I may regret it, otherwise I should be sorry to see our agricultural college in any body's town.

The CHAIRMAN. The Secretary will read section 10.

The Secretary read as follows:

Sec. 10. Schools for the benefit of the deaf, dumb or blind shall be fostered and supported.

Mr. KIRKPATRICK. Mr Chairman, I desire to amend the section by striking out the word "or," and substituting the word "the."

Mr. ESTABBROOK. I would ask the gentleman if the section does not include all of that class of persons, just as well as if the word "the" were used.

Mr. KIRKPATRICK. Mr. Chairman, It strikes me that that amendment is required to make it obligatory upon the authorities to provide for this unfortunate class, and I think the phraseology is better.

Mr. ESTABROOK. Mr. Chairman, I don't think the gentleman has argued that point quite so often as I have in my practice in criminal courts.

Mr. MASON. Mr. Chairman, I would simply inquire if the deaf are not always dumb?

Mr. ESTABROOK. No sir.

Mr. MASON. Would it not be better to say "Deaf and Dumb or Blind"?

Mr. MYERS. Mr. Chairman, If we are to go into a general conversational society I think we had better do it at once.

The CHAIRMAN. Gentleman will please address the Chair.

Mr. ESTABROOK. I will submit to the Honorable Chief Justice, whether this does not include the whole.

Mr. ROBINSON. Mr. Chairman, if it is in order. I move to strike out the words, "deaf, dumb or blind," and insert "deaf and dumb and the blind."

The CHAIRMAN. The question is on the amendment of the gentleman from Lancaster (Mr. Robinson).

The Committee divided and the amendment was agreed to.

Mr. WILSON. Mr. Chairman, I move the section be adopted as amended.

The 10th section was adopted.

The Secretary read section eleven as follows:

Sec. 11. The superintendent of public instruction, secretary of State, treasurer and attorney general shall constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds, in such manner as may be provided by law. The superintendent of public instruction shall be the presiding officer of the board. Any three members shall constitute a quorum. Such board shall also have the general management and control of the affairs of the State normal schools, and the State university and agricultural college, and shall take the place and do the duties of regents of said institutions. Such board shall also have the general supervision of public instruction in the State.

Mr. ESTABROOK. Mr. Chairman, It is proper to state perhaps, that while the Committee adopted this in order to make a report at an early day, yet no one of them thought this was the best plan. It was and is not my own views. For the purpose of getting my own views before the Committee, I will offer the following:

That the section be struck out, and that two sections be adopted in lieu thereof as follows:

Sec. 11. The supervision of public instruction shall be vested in a State Superintendent and such other officers as the Legislature shall provide. The superintendent shall be chosen by the qualified electors of the State in such manner as the Legislature shall direct; his powers and duties shall be prescribed by law.

Sec. 12. Until the Legislature shall otherwise provide the superintendent of public instruction, Governor, secretary of State, treasurer and attorney general shall ex-officio constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds, in such manner as may be provided by law The superintendent of public instruction shall be the presiding officer of the board. Any three members shall constitute a quorum. Such board shall also have the general management and control of the affairs of the State normal schools, and the State university and agricultural college, and shall take the place and do the duties of regents of said institutions.

Mr. ESTABROOK. Mr. Chairman, My idea is that two interests are involved in this, and hence I can see that there is a necessity for dividing it, and I believe it is usual in all of the States that the State superintendent of public instruction is the head of this board. I have provided that the State officers ex-officio shall be such board until the Legislature shall otherwise provide, and I think it will save expense by employing those who can serve in this capacity without additional compensation.

The idea that I have and I think of the other members of the Committee, is that we shall hold the State responsible for every dollar of the school fund, and the State shall guarantee the return of every cent that is lost. Now, that is one idea I insist upon as one of the gems of the proposition I offer. I insist upon it as one of the gems of the proposition. In the next place, the trustees of the fund have the responsibility of keeping this forever intact and undiminished. We give them the authority of the law to indicate to themselves the manner in which it shall be invested, to say how it shall be made safe, and for the time being only they can have the opportunity of ascertaining whether this or some other method would be the best. The amendment simply provides that various officers of the State shall constitute a board. If it is deemed best it could be abolished, leaving the State all the while under this responsibility, the privilege of saying by what means they shall so execute their trust. This is the idea we have.

Mr. MAJORS. I would call the attention of the gentleman from Douglas (Mr. Estabrook), and the members of the Convention to the first section of this Article as reported. "The educational and school funds and lands of this State shall be under the control and management of the Legislature—" Now in calling their attention to that, it seems to me it is conflicting with section eleven, or the amended sections as proposed, and I feel that the whole matter is competent to be left with the Legislature to provide for this matter, and that we need not tie ourselves by any Constitutional provision in this matter.

Mr. KIRKPATRICK. Preparatory to considering the section as reported by the Chairman of the Committee, I move that section eleven be stricken out.

Mr. ESTABROOK. I offer it as a substitute.

Mr. KIRKPATRICK. I do not like it in that way, I want it divided; my motion is to strike out the original, not the substitute.

Mr. ESTABROOK. My motion was to strike out the original and insert the substitute.

The motion was agreed to.

Mr. STRICKLAND. I find in the report of the Committee on State Institutions and Public buildings, that a board is provided for as follows:

¶ 1. That a board of commissioners, consisting of————,to be called commissioners of State institutions and public buildings shall be elected at the first general election provided for in this Constitution, whose duty it shall be to have the general supervision and control of all State institutions and public buildings, and the care and sale of all lands appropriated for and belonging thereto.

¶ 3. The board of commissioners of State institutions and public buildings shall perform the duties of the normal school board of education, and shall be regents of the State university and agricultural college. The governor, as member ex-officio and chairman shall complete said board of regents.

I read these to call the attention of the Convention to the fact that this question might be considered with that report.

Mr. KIRKPATRICK. I do not think the report of this Committee is to be considered, it is not before the Convention.

Mr. BALLARD. I very much question whether this Convention is prepared to act on this at this time or not. It is something entirely new to me. I should prefer a re-commitment in order that the new section may be printed.

Mr. HASCALL. We have not adopted a single Article, though we have been in session some time. We have got a short Article here reported by the Committee on Education, etc. We have got to a point where we can finish it in a short time. In regard to the report of the Committee on Public Buildings, I am unwilling to mix up the management of our penitentiary with our school institutions. I think we should proceed to adopt this eleventh section we would then get along to the remaining section and be able to finish it up at this time. I hope we will dispose of it.

Mr. SPRAGUE. Mr. Chairman, I have prepared here a section which I wish to offer as a substitute for section eleven, which has been discussed.

The Secretary read the substitute,

as follows:

The superintendent of Public Instruction and one commissioner to be elected from each judicial district within this State, shall constitute a State Board of Education. The Superintendent of Public Instruction shall be the presiding officer of the Board. Such board shall have the general management and control of the affairs of the State normal schools, and the State university and agricultural college and shall take the place and do the duties of regents of said institutions. Such Board shall have a general supervision of public instruction in the State.

Mr. ROBINSON. I agree with the gentleman from Douglas (Mr. Estabrook) and am opposed to the amendment. I think it ought to be left to subsequent Legislatures to provide a new board. They can do it as the exigences of the time may require. We may fix something they do not want.

The CHAIRMAN. The question is on the substitute offered by the gentleman from Saunders (Mr. Sprague).

The substitute was not agreed to.

The CHAIRMAN. The question now is on the amendment of the gentleman from Douglas (Mr. Estabrook.)

The motion was agreed to.

The CHAIRMAN. The Secretary will read section twelve.

The Secretary read the section as follows:

Sec. 12. Until the Legislature shall otherwise provide the superintendent of public instruction, governor, secretary of State, treasurer and attorney general shall ex-officio constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds, in such manner as may be provided by law. The superintendent of public instruction shall be the presiding officer of the board. Any three members shall constitute a quorum. Such board shall also have the general management and control of the affairs of the State normal schools, and the State University and agricultural college, and shall take the place and do the duties of regents of said institutions.

Mr. KIRKPATRICK. I am opposed to the adoption of that section. I think it unnecessary to put power into new hands. I think we had better leave it as it is until the Legislature meets. I shall oppose the adoption of the section.

Mr. SPRAGUE. I have also a section drawn up here which touches so far as the question of the funds and the sale of school lands are concerned. The same division which is treated with in the provision reported by the gentleman from Douglas (Mr. Estabrook); and I offer this as a substitute:

Sec. 12. The Legislature shall by law provide for a State Land Office for the sale of all school and other State lands, and for the proper distribution of the proceeds of the sales of such school lands among the different counties of the State, there to be loaned, under provisions of the law, to school districts or other parties within said counties wishing to loan the same.

Mr. ABBOTT. I would like to ask the Chairman of the Committee if he proposes to have the superintendent of public instruction attend all the sales of school lands throughout the State, and personally superintend them.

Mr. ESTABROOK. I so intended it.

Mr. ABBOTT. Then I am opposed to it.

Mr. ESTABROOK. And I have my desk full of the evidences of the propriety of the measure. Because it will be shown, by the report of the Committee of which I am Chairman, that by subjecting the interests of the schools, its funds and lands, to the officers of the different counties, to be sold and transmitted to the treasurer of the department of the State, we have already sustained a loss of $10.000 in seven counties, so far as the records reveal. In the first place, we asked the proper departments to make an exhibit of the amount of school funds; secondly, lands sold and the money paid into the treasury. Now we asked the county treasurers to state to us how many acres have been sold; how much money has been paid in, and from the State Auditor and Treasurer their report; and the result is that the State has sustained a loss of $10,000 in seven counties; and it is our intention that these irresponsible parties, in these several counties shall not manipulate these funds, but that it shall be done as we suggest, and it is no more expense. The treasurer, if you please, shall see to it that the thing is done properly, and that they shall go, at the times advertised, and notify the different counties, and make these sales; and that those individuals, in the different counties, shall no longer manipulate the funds of the State.

Mr. ABBOTT. If that is the state of affairs, I am perfectly satisfied.

Mr. KIRKPATRICK. I cannot very well comprehend the question under discussion, but I understand it is claimed that there has been a loss of school funds, and also that reports from several treasurers have not been received. Now, I think, under the present law, the treasurers have nothing to do with the sale of school lands. Primarily, they know nothing about them. The lands are advertised as a whole, in one advertisement, and due notice given by the county clerk, in his official capacity. Now, if under our present system, we are liable to losses in our funds, I am ready to assist in making our school interests more secure. As the Legislature will soon meet, and the whole subject, as provided for at the present will come before them, and will leave it as it is until that meeting, I am of opinion the Committee had better refuse to adopt this section. It may be this section is preferable to what has been stricken out, or to the law now in force. And unless I have a better understanding, I shall be obliged to vote against the section.

Mr. MASON. Mr. Chairman, I hope that the amendment offered by the gentleman from Douglas will prevail. I think there are urgent reasons why it should be first made in your Constitution, that the State shall be responsible for all these school moneys that come into its hands. Then it should be left in the discretion of the State to take care of that fund, and they should not be required to send it to any place to loan. The State is the party, who is responsible for it, and should be granted the largest discretion in that regard. To day prudence might dictate that this fund, instead of being distributed in the counties, the loan should be invested in State warrants or stocks. To-morrow, or in a few years hence, public prudence might dictate that it should be invested in United States stocks; and this matter should be left in the control, and under the supervision of the Legislature and of State officers. This idea of making so many parties to handle money is a very dangerous expedient in practice. Did any body ever know it to answer in the every day affairs of life? Money will wear a little in handling. It never failed anywhere; and if you let every county clerk handle the fund, and there be fifty-two of them, the loss, on an average, will be just fifty-two times as much as though you placed it in the hands of one State officer, responsible to the State only. I have no doubt, and, indeed I might say I know, that the State fund has suffered, not so much through crime as through ignorance. For in some counties I am told, the commissioner has allowed a per cent. of the sale of the school lands to the county treasurer. This not through criminality, but through ignorance. And if you place it under the supervision of the officers named by the gentleman from Douglas, the Attorney General, through his instructions, will see that nothing is done through ignorance and nothing lost through carelessness and indiscretion. It seems to me, that the report of the gentleman covers the whole case, that is until the Legislature shall otherwise provide by law, the officers named in the Article shall have the supervision and control and handling of this money, and the State officers shall be responsible for it, and they responsible to the State. There are other considerations, when you come to consider the details of our laws, that should move the Committee to adopt this plan. The county authorities, in many instances, fix the bond of the county officers and approve of the securities; and the State has no power or not in the election of those commissioners who act in the responsible capacity of approving the securities of those officers who handle this fund. And, for this reason, the money should not be entrusted to their hands, but to the hands of such officers that the State in its aggregate capacity, as such, shall give bonds, and determine the amount in which their security shall be approved. It seems to me that any attempt to dilute or distribute this fund is only fraught with increasing and geometrically increasing dangers. Not only dangerous to the fund, but it is in some respects, admitting officers who, not so often through criminality of heart commit these blunders, as through ignorance, inability and indiscretion. And I apprehend, after a careful investigation of affairs, there are funds in some counties—I know I could name in the first district—funds that have been allowed from the school fund, that there was not the slightest authority in law for allowing. By whom? By your county commissioners. They thought their duty was to pay some person for allowing the handling of this fund. Now, it seems to me, the experience of the past should guide us, and that this provision is well conceived, and should receive the approval and sanction of the committee. That is to say—they may hand to Mr. A. $10,000, and tell him you hold him and posterity responsible, all the property of the State responsible for the principal and the interest. Then Mr. A. should have the handling of and determining who should hold and approve the bond and securities of the gentleman who holds the bond.

Mr. LAKE. Mr. Chairman, I agree, in the main, with the honorable gentleman from Otoe (Mr. Mason). If what has been represented here be the fact, it is very clear to my mind that the system under which we have been operating in respect to this fund, is not a wise one; it is not satisfactory to the people of the State.

The gentleman from Nemaha (Mr. Majors) seems to think there is a conflict between the first Section of this Article and the proposed Section. It seems to me there is no such conflict. It is only proposed to provide for this matter until the Legislature can convene, and take action upon it and provide otherwise. It don't propose to take this matter out of the hands of the Legislature, but place it in proper hands until the Legislature have had proper time to provide some other plan for the management of this fund. If you come to the conclusion—as we must, I think—that the plan under which we have been operating, and now operate, is not safe, then where can the fund be placed where it will be more so than in the hands of the officers named in this Section? Can any person propose a person, or an officer where the fund will be safer? I believe in leaving the matter to the Legislature and I believe that to be the general sentiment of this Committee, but there is a necessity for a change between the time when this Constitution will be adopted, and the time when the Legislature will have an opportunity of considering this matter and determine what shall be proper to do with it. During this time, let us provide in such a manner that the fund shall be safe—that we shall right the wrong as much as we can by the adoption of some safe plan for the protection of these funds. If any gentleman can suggest a better plan for this, I am ready to fall right in with it. I believe the proposition proposed is the best one which can be found.

Mr. WILSON. Mr. Chairman, I move that the Committee now rise, report progress, and ask leave to sit again.

Motion agreed to.

Mr. STEWART. Mr. President, the Committee of the Whole have had under consideration the report of the Committee on Education, School Funds and Lands and beg leave to report progress, and ask leave to sit again.

Adjournment.

Mr. LEY. Mr. President, I move the Convention do now adjourn until 2 o'clock p. m.

Motion agreed to.

So the Convention (at twelve o'clock and three minutes) adjourned.

Afternoon Session.

The Convention met at 2 P. M. and was called to order by the President.

Committee of the Whole.

Mr. SCOFIELD. Mr. President, I move that the Convention resolve itself into the Committee of the Whole for the purpose of resuming the consideration of the report of the Committee on Education, School Funds and Lands.

The motion was agreed to.

So the Convention in the Committee of the Whole—Mr. Griggs in the chair proceeded to consider the report of the Committee on Education, etc.

The CHAIRMAN. Gentlemen of the Convention the question is on the amendment offered by the gentleman from Saunders (Mr. Sprague).

Mr. SPRAGUE. Mr. Chairman, I don't wish to occupy the time of this Committee, but it seems to me that there is something in this matter of importance to the State. First as a matter of economy. Under the substitute offered by the gentleman from Douglas (Mr. Estabrook) we have six persons constituting a board to be paid, where you would have but one under my substitute. Again, it is contended that it increases the chances for stealing. Now my experience tells me that it is true that the school fund will be safer in the hands of the different county officers than in the hands of two or three men here in this city. I for one am in favor of doing as much good with this fund as I can for the State, and for the purpose for which it is given and I think it is for the benefit of the schools of this State and I am in favor of putting it within the reach of the different district schools of the State. I think the substitute I offer will accomplish this and other benefits of which I am in favor.

Mr. MYERS. Mr. Chairman, I wish to inquire whether there is any amendment now pending other than the one offered by my Colleague? (Mr. Estabrook.)

The CHAIRMAN. I have just stated that the question is on the substitute offered by the gentleman from Saunders (Mr. Sprague).

Mr. MYERS. Mr. Chairman, The amendment contemplates placing the whole department of State in the hands of State officers to be elected by the people. That is, the Secretary of State, the Auditor, Treasurer, and the Attorney General, and that the Board of Regents is abolished. I am in favor of the proposition except as to its application to the Normal School which is not in the reach of the State officers unless they undergo a large personal expense in taking charge of that institution. It is located at Peru and in possession of a Board of Regents who, I believe have the entire confidence of the community, and I am happy to say from reliable information that the affairs of that institution are managed with economy, ability and with the sole purpose of advancing the institution. It may as well be excluded from the amendment of my colleague. Upon the general principle of abolishing the Board of Regents, I believe it is eminently wise and proper. I have for some time regarded it as an incubus on the State. Many complaints were made during the last session of the Legislature as to their extravagance, and want of foresight in administering its affairs. I understand that the institution of the University, when in a chaotic state, quite an infant as it still is, that enormous expenditures were calculated upon to furnish the interior departments; that an estimate was made for furniture that amounted to $12,000. When the Chancellor arrived he discovered that he could furnish the entire building for one thousand dollars. A board that is so reckless as that on this one single item is certainly open to just animadversions. I believe it could be more harmoniously arranged than it has been in the past. The people will elect men from their midst who will administer that institution in the interest of education without regard to the advancement of personal or political feelings. It is true that the Board of Regents has many associations that endear it to some people. The Smithsonian Institute, bequeathed by an Englishman, has a Board of Regents, and that Board has been administered solely to the carrying out of the injunctions of the gentleman who made the bequest to the people of the United States. I would like to see the same ideas propagated by the gentlemen who are to be invested with the management of this institution. The eyes of the whole of the people of the United States are directed to the people of Nebraska for the faithful discharge of the duty entrusted to their care. With the exception of the amendment I propose to make at the proper time to except the Board of Regents of the Normal School, I believe it would wise and proper that this change should be made.

Mr. WEAVER. Mr. Chairman, The substitute before the committee proposes the distribution of this school fund among the different counties. I shall support it for various reasons. The great object of the school fund is for the upbuilding of a system of schools for the State of Nebraska. Gentlemen who oppose this say this great school fund should be centralized here at the capital. They give as a reason therefor that the individuals elected to responsible positions might not give sufficient security. I see no reason why the different counties choosing men of integrity to fill positions could not be as responsible as men elected to the State offices. I think it would be much safer when it is distributed throughout the State in 52 counties, than here in one point. I think it would carry out the object for which that fund was created, for building up the educational interests of the State of Nebraska. If it is distributed among the counties they can loan to the school districts, and they can rear school houses for the education of children. I am greatly opposed to this centralization system. It has been said that it should be left to the Legislature. I am opposed to this. It is well known that at the very last session of the Legislature an attempt was made to get a bill through by which counties should be entitled to school money, which failed. At the same time there was money to loan for all other parties; individuals could come in and get it for the purpose of building hotels, or investing in private speculation, while counties could not get hold of it for the purpose of advancing the educational interests of the State. I say for fear the Legislature in the future shall do as in the past, give it to private individuals, and not to counties or school districts, there should not be a clause in this Constitution clothing them with the power. Gentlemen here tell us that 10,000 acres of land have already been lost, and that the report of seven counties only are in. Where is it lost? Have the counties lost it? If so they have not shown any such thing! They have not shown that it was not lost right here. I submit this as a proposition, that if money is loaned by the State to the different counties, every acre in the county is responsible for that loan, there is a lien on the land for its faithful payment. I hope it will not be left in the hands of a few individuals, I think it is much more safe the nearer it gets to the people.

Mr. NEWSOM. I have a substitute for Mr. Sprague's amendment. I would like to have this incorporated. Instead of, loaning money to the different counties, take this plan. All funds arising from the sale of lands set apart for educational purposes shall be invested in the order following; first, interest bearing bonds of this State; second, interest bearing bonds of the counties of the State; third, interest bearing bonds of the United States. I am in favor of the substitute providing for a land office. I believe there is sufficient to keep one man employed. This would make it incumbent upon the Legislature to provide how land should be sold, I believe there is enough to justify it without leaving it to the hands of three or four gentlemen.

My objection to loaning this money in the counties is, that some of it must be lost. I do not believe it is in the power of any man or set of men to loan money upon individual or State account and make all these loans sure to the State. And for that reason, I am in favor of the proposition of taking it away from the province of any party in this State to loan its money at all.

Mr. ESTABROOK. Mr. Chairman, The import of the amendment offered substituting section twelve, it seems to me is not understood at all by the gentleman from Richardson (Mr. Weaver). The system, as it now prevails is for the county clerk or treasurer, or both, to offer the lands for sale and give some evidence or title of such sale, and, if they perform their duty, to send the money arising upon the sale to the Treasurer of the State, so that the money finally, if the officers do their duty, finds its way to the Treasury of the State of Nebraska. We find, by the communication sent us in response to the circular issued, there is confusion everywhere, to say the least, where there is nothing corrupt; and at least there is incompetency and great carelessness. For instance, we have a communication from one county, and one of the most populous, wherein the treasurer responds that it is impossible for him to answer the inquiry as to how much land has been sold, how much the land which was sold brought; or what has ever been done with any part of the money. That it will take him at least two weeks to look up the records and the cost will be worth to him at least $50; when it seems to me that if the duty were properly discharged the records of the whole thing would be so compact somewhere that they could be turned to as a merchant turns to his ledger, and show what the balance is, what has gone from him, where, and what are the evidences of it. But that is the method which has been practiced, and which it is proposed to remedy by my amendment. The gentleman seems to think the policy has been to retain the money in the county to be loaned and used there. It is not a proposition at all here, as I understand it; and I would not favor any proposition to act as a restraint upon the authorities. For myself, I am in favor of loaning in the different counties by some means that shall be secure. I would say, so that it might not be used for purposes of corruption, that there should be a register. And for this there should be a precedent in the State of Missouri, where those who desire to loan the school fund, record their names on the register, so that when the money is ready to be loaned it is on the principle of the first come first served. And when this is made safe by giving us double and treble the amount in real estate of the amount loaned, or it is made entirely secure by one or two signers of a joint note, it seems to me by this the money is made secure. And what is most desirable here, and which we lack, is a circulating medium. So vast a sum as this could be circulated and do good, rather than by lying in the pigeon hole of the treasurer's desk, as the boy hid his cake in the cupboard so that it could not be found until it became mouldy. That would suit me the best; and if anything had been done in that regard I should have insisted upon something of that kind, but I forebore mentioning my idea. On one hand I propose to lay on the State the burden of taking care of the fund; and on the other I give the officers the power to make what disposition they please. Now, instead of depending upon obscure individuals who give no bond for the fulfilment of this duty in the different counties of the State, whether they be sparsely settled or not, I insist that the treasurer himself go there, make the sale, and place the money in the treasury of the State, there to remain until the Legislature have described some mode by which this shall be disposed of, whether it be in bonds or by loans. And if it be by loan I would require that no county officer ever touch one single cent of it, but when he wanted to he be made to give a draft for it. I do not propose now that we shall make provision for the particular manner or place where the investment shall be placed, but who shall make the sale and who bring the money into one common storehouse. I propose that it be done by one responsible person elected by the State, who shall give bonds for the safe keeping of the money. If this be not done, then it is committed to the hands of irresponsible persons throughout the State. The treasurer I have alluded to is the one for Cass county, one of the most populous counties in the State, and he writes to me to say it will take him two weeks and be worth $50 to send the information we seek. Others address us in similar language, and in no instance do they come in any form to be readily comprehended. From those we have received, so far as we can ascertain; so far as we can dovetail the facts together, there is a diminution in seven counties of $10,000 in the school fund; and that is what we propose to remedy. We propose instead of spreading this thing over the entire surface, where there are none responsible, that the State officers proper shall first take it into the strong treasury box of the State; bring it and deposit in the State vault. There to remain until ordered away by the Legislature of the State of Nebraska.

Mr. SPRAGUE. I grant that my substitute does not provide for the appointment of a superintendent to take the sole control of this matter, but proposes to establish a land office, which shall have the sole control of the sale of this land; and it does not propose to leave it with the different counties, but to change it in that very particular. It does not leave it in the hands of the county clerk or treasurer, but proposes that the Legislature shall provide as they deem best, making but one officer, instead of throwing it into the hands of at least, six, who are encumbered with other official business, which would only attract their attention from their particular duties. I want that this be given to one officer who shall attend to this alone.

Mr. BALLARD. I wish to inquire of the Chairman of the Committee how stands the report from Washington county.

Mr. ESTABROOK. I do not recollect. We are getting them in every day, and the Committee will as soon as they can get together, make a supplementary report.

Mr. BALLARD. I know something about the making of that report and the business there. Our treasurer made his report promptly.

Mr. ESTABROOK. I will state that I have not examined that report very closely; but I know that the State Auditor reports 860 acres sold more than the returns from Washington county indicate.

Mr. BALLARD. Yes, I had heard of that matter. I am acquainted with the amount received from our county treasurer. He is an old settler, and one of the most active business men in the State. But sir, with regard to the difficulty that come up before this Convention about making provisions for this fund, it seems to me so far as the competency or incompetency of the county officers, and the competency, or incompetency of the State officers is concerned, that it is a question with which we have nothing to do. I have had something to do with the school fund in the State of Iowa, where I used to live. That State provided for the election of a State superintendent, and for the election of an officer called the school county commissioner in each county, and his duty was to sell, under the direction of the State superintendent, school lands in the county. I wish to speak of one of our State superintendents that I was acquainted with. This gentleman was elected State superintendent, gave bonds which were approved by the State officers having some of our leading men as his bondsmen, and at one dash he cleaned up the small sum of $42,000. The largest steal I ever knew a county officer to make, of the school funds, was $7,000. Hence I say that our State officers are just as likely to steal from this fund, as county officers. If these officers are dishonest, they will steal any how. Let us elect honest men to these offices. Where have the funds of this State been, I ask, during the last few years? Have they all been in the hands of county officers? I think, it seems to me we have heard our State officers mentioned in connection with this school fund. The people have the remedy for these evils in their own hands—that is to elect honest men for county and State officials.

Mr. PRICE. Mr. Chairman, I favor the amendment of the gentleman from Saunders (Mr. Sprague) from the experience I have had, I believe it is better, and more expedient, to place this fund in the hands of the county officers. I believe in allowing counties to retain the amounts raised in the county, and have the use of it. I think it will work many inconveniences to have the money all in one place. It seems to me it is better to scatter it in different parts of the State. It seems to me there is no use in requiring the different county treasurers to send the funds collected to the State treasurer, and there is more danger of losing the funds, than if they are retained in the county. The funds should be loaned out. The Legislature can pass laws stating how is should be loaned. They can bond county treasurers, for instance, in a sufficient amount to make him responsible for the funds coming into his hands. Many portions of the State are languishing to day for the want of money to improve their natural advantages. If the people could get, of the county treasurers, a portion of the State funds at 10% say, they would have means to open up their farms, and otherwise improve the country, and I am sure the risk of losing the money in this way, cannot be as great as under the present system. I approve of the amendment of the gentleman from Saunders (Mr. Sprague.)

Mr. HASCALL. I call for the reading of the amendment.

The Secretary read, as follows:

"The Superintendent of Public Instruction and one commissioner to be elected from each judicial district within the State shall constitute a State board of education. The Superintendent of Public Instruction shall be the presiding officer of the board. Such board shall have the general management and control of the affairs of the State Normal schools and the State University and Agricultural College, and shall take the place and do the duties of regents of said institutions. Such board shall also have the general supervision of public instruction in the State."

Mr. HASCALL. Mr. Chairman, If it is the will and desire of the people of this State that the school fund be loaned out on good and sufficient security, to the people of the State, then the amendment drawn by the gentleman from Douglas would accomplish that result, and it is not necessary to put the details in this Constitution. I understand the present board of regents are to act, until the Legislature provides otherwise: if then it is wished to loan this money on good security throughout the State, it can be indicated at that time. The first section of the report we have adopted says this fund shall be managed by the Legislature. Secondly, I think it would be improper and idle to adopt this amendment of the gentleman from Saunders (Mr. Sprague) when by adopting the amendment offered as a substitute for the original amendment, it will accomplish all that is desired.

Mr. MAXWELL. Mr. Chairman, my friend from Douglas (Mr. Estabrook) states there is a discrepancy between the amount of money received, by the State treasurer, and the amount of land sold, as reported by the different county treasurers. Now perhaps that can be explained, for instance, a man may purchase land under the conditions by which the school land is sold, making partial payments, but fails to make the payments and his title is not perfected. I would inquire of the gentleman from Douglas (Mr. Estabrook) whether there is a discrepancy between the report of the State treasurer and the report of the treasurer of Cass county.

Mr. ESTABROOK. Mr. Chairman, I would say, for the gentleman from Cass, (Mr. Maxwell) that the treasurer of that county has not yet reported, but says it will take two weeks to make returns and it will cost him about $50. If the duties of his office are properly attended to, is it not strange that it takes so long to make returns?

Mr. MAXWELL. Mr. Chairman, It seems to me it would be better to keep this fund in the counties, that is to give each county the amount of money received from the sale of lands in that county, and require them to pay the interest annually. It seems to me this would be a much better way than to have this money centralized here, and I am in favor of the substitute.

Mr. ROBINSON. Mr. Chairman, this section as first submitted, provides for the care of this money until the Legislature shall otherwise provide by law. For my part I wish the gentleman from Douglas had worded his amendment in such a manner as to prevent the loan of this money to individuals; upon the whole I don't think there will be a great deal of money made by the state in loaning money on real estate security, but let it be loaned on securities having a real market value.

Mr. KIRKPATRICK. Mr. Chairman, I don't know that I understand the substitute offered by the gentleman, but if I do understand it, I see very little objectionable in it. It provides for a State land office to be located at the Capital, which shall have charge of all the school lands of the State. Now I think that is objectionable, for instance, when the lands are sold in the several counties they are purchased by the citizens of the counties, and it would work a hardship for those persons to have to come here to attend those sales. Now, sir I would be in favor of leaving this matter to the action of the Legislature, and I am of the opinion that this great school fund should not be put into the hands of one man here at the Capital. There has been favoritism in the loan of this money in the past and perhaps it might be so hereafter unless we guard against it, and I would oppose the amendment for these reasons.

Mr. GRIGGS. Mr. Chairman, I am in favor of the principle contained in this substitute, that is, the loaning of this fund to the different districts of the State. I believe that it would be of great good to the counties in our 12th district, the one which I now represent but, I am opposed to this State land office because I think there are chances for great corruption and fraud. Another reason why I am opposed to it is, that it says this fund shall be given to the counties and loaned out to individuals: I am opposed to that for I believe that this State has lost several thousand dollars, in loaning to irresponsible individuals. I believe with the gentleman from Lancaster (Mr. Robinson) that it should be loaned on good securities, such as school district bonds, city or United States bonds. Another reason for opposing it is because it would make it necessary for every person desiring to purchase school lands to come to this place for that purpose.

Mr. MASON. Mr. Chairman, I apprehend that some of the difficulties arise from the fact that we are considering two propositions instead of one, under this substitute; the one is the sale of the school lands and the other is the care of the school funds. It is a matter of great importance to the State and people and in my judgment coming generations are interested in the mode which this Convention shall settle upon, of disposing of the public lands, and after presenting my own views of this question, and in order that it may be thoroughly considered, I shall take occasion to move a recommitment of this subject to the Committee from whence it came, that they may consider some of the views presented in Committee of the Whole. I submit to the Convention the propriety of providing in the Constitution for a State Land Commissioner who shall have charge of all public lands, to dispose of them as directed by law, requiring the State treasurer to receive all purchase money for land sold, and to give duplicate receipts, one to the purchaser and one to the Land Commissioner, on receipt of the money. The treasurer can easily do this and such a system would remove all temptations, and avoid the possibility of speculations. The Land Commissioner would never handle any money at all. Besides, Mr. Chairman, in presenting these views to the Convention, there seems to be but one voice coming from every county in this State, that nobody can tell what lands this State holds to day. No State officer has been able to inform us up to this hour what particular tracts have been selected and the total approved to the state.

No State officer has been able to inform us what particular tracts of land have been sold and paid for, which have been secured to the State. Now, supposing any man's private affairs were left in this uncertain condition, is there any business man in the world who would trust him, when neither he himself nor any of his clerks knew what his assets or liabilities were, or what he had? When you adopt this system in your Constitution, creating this Land Commissioner, you dedicate him to the specific purposes of making certain that which is now uncertain; you commit to his special care and custody the securing of what lands are not secured, selecting what are not selected, devote his time and attention to the special interest of the State in regard to its real property. Besides, which member of this Convention that holds in his own right, as many as we hold a doubtful title to, would trust it to a dozen and one individuals? You would select one to straighten up the whole business. It seems to me this matter is almost too plain for discussion, that we have suffered hundreds; yes thousands, tens of thousands of dollars for want of a Land Commissioner, one who could devote his whole time and attention to this matter. We are contented to have a gentleman look after that interest and hold him responsible. In that we are protecting the interests of the whole State and holding hundreds of thousands of acres in our hands. More than that, we have no department, no individual to whose special care and keeping it is entrusted, we inquire of the Governor, he sends us to the Auditor, the Auditor sends us to the Treasurer and the Treasurer does not know anything about it, and who in God's name does? It seems to me it is plain we ought to establish a Land department and Land Commissioner who shall have the exclusive control of the lands, to sell them and see that the money is paid over to the Treasurer and the Treasurer take duplicate receipts for it, if school land deposit the money in the school fund, if other lands, to the fund to which it belongs. It seems to me our friends who have declaimed so loudly in favor of the distribution of this money through the State have entirely misapprehended the view which has been taken. Nobody has opposed that, we say it should be left to the discretion of the Legislature. Were I legislating to day, I should say the safest investment that could be made of the school moneys to day would be in the floating indebtedness of this State, every dollar of which we must redeem, and pay ten cents on the dollar. I say it is much safer than real and personal property. Were I legislating I should advocate this as a present rule, a year from to day that rule might not work so well; hence, so far as investment is concerned it should be to the Legislature as a matter of legislative discretion and law. So far as the establishment of the land department is concerned it seems to me it must commend itself to the judgment of this Committee. Consider our State, extending from the L'eau qui Court to the Kansas line, from the Missouri river 500 miles West, who is looking after it? What gentleman is specially dedicated to protect this interest for the education of the children of the State? Why it seems to me our first duty is to establish a Land department and make that department such that every plat shall be put on books pertaining to that office, and let the Legislature provided for the sale, then let us see how it will work. The Commissioner sees fit to sell the school land in my county to day. He goes to the plat and knows every acre reverted to the State, it is his special duty; he advertises every quarter section in that county that will be sold on such a day. The man who purchases pays his money to the Treasurer, it is in the Treasury, the Legislature can lay their hand on it, and say how it shall be disposed of. This outline of my own views in respect to the management of these affairs can reach this result and accomplish the object in view. I will move to recommit this subject matter of the section twelve back to the Committee for their consideration. While I move to recommit for this object, I would desire to hear the views of every member of the Convention, men who have experience in business and financial affairs, if it is not a matter of the first importance that we have a Land Commissioner whose special business it shall be first to ascertain what we have got, second, ascertain what is in doubt, third, go to Washington if necessary to secure it. It is to attain this end I move the recommitment of the proposition now before the Convention.

Mr. MYERS. The Committee will be compelled to rise and report progress, and it can be re-committed in the Convention.

Mr. MASON. I move that the Committee now rise and report progress for the purpose of re-commiting this matter to the Committee from whence it came, to take into consideration the views of the various members of the Convention.

Mr. ESTABROOK. Let me suggest the last section also.

Mr. MYERS. I hope the gentleman from Otoe (Mr. Mason) will insist on his motion for the reason this is the most important feature in the whole bill. Let us attend to one thing at a time. The proper course, in view of the revelations made by the gentleman from Otoe (Mr. Mason) is to do as he has indicated, this Committee rise and refer it back. After that Committee has perfected the bill, immediately go back into Committee of the Whole, finish the bill and report it to the Convention. That is the regular course of proceeding and I hope the gentleman who is the chairman of the Committee will acquiesce in the motion of the gentleman from Otoe (Mr. Mason.)

Mr. ESTABROOK. Mr. Chairman, I would suggest to the gentleman, who is a good parliamentarian, before he takes his seat, that we need not arise for the purpose of making the recommendation. We can now declare that when we arise, this shall be reported back with the recommendation that this be referred to the Committee for the purpose of re-consideration.

Mr. CHAIRMAN. The motion is that when we do arise, we report the bill back with the recommendation that this be re-considered.

Mr. MASON. Mr. Chairman, I will move that when the Committee rises it report the bill back to the Committee from whence it came, with the instruction that it take into consideration the propriety of creating a Land Commissioner and establish a general land office for the State.

The motion was agreed to.

Mr. STRICKLAND. I move the adoption of section twelve, which will now be thirteen.

The Secretary read the section.

Mr. STRICKLAND. I will withdraw my motion on the ground that the gentleman from Otoe has an amendment.

Mr. NEWSOM. The Idea I have in this which I now offer is to amend the section by adding the words "nor shall the State accept of any grant, conveyance or bequest of moneys, lands, or other property to be used for sectarian purposes."

The amendment was agreed to.

Mr. MYERS. Mr. Chairman, I offer the following, to go in at the end of the section as amended; "nor shall any part of the school fund be devoted or appropriated to the support of private schools."

Mr. MASON. What is the object of that?

Mr. MYERS. The object of this is to prevent a division of the school fund for every charitable, sectarian or religious purpose. It is to keep the school fund intact and divided only among the schools. It is to prevent the moneys of the State from being divided, taken or appropriated from the treasury to the support of a Lutheran, Presbyterian or any other school that wants to make a levy upon the general school fund for the advancement of their sectarian interests. I think it is the policy of the State to keep the money intact, and appropriate entirely to the support of State schools; and no religious institution shall claim any of this fund for the advancement of their peculiar ideas.

Mr. GRIGGS. Is not this included in the first section?

Mr. MYERS. I would like to have a clean and distinct enunciation of the fact that this money is never to be appropriated for sectarian purposes. If that clause covers the ground I shall be satisfied. I withdraw my amendment for the purpose of allowing the gentleman from Gage (Mr. Griggs) to make an amendment which will probably cover the ground.

Mr. GRIGGS. I move to insert after the word "supported " in the first line "in whole or in part."

Mr. WAKELEY. I do not know that there is any objection to this amendment only that it seems to be entirely unnecessary. The sixth subdivision provides, in emphatic words, that "the school funds shall be exclusively applied to the following objects:"

Mr. GRIGGS. Suppose a school was only partially supported by the school fund, like many private schools are? They would be partially supported by subscription and part by the public fund, and my object was to cut that out entirely, so that it would not be supported except in the public schools.

Mr. MASON. Mr. Chairman, I

take the same view of this matter that the honorable gentleman from Douglas (Mr. Wakeley) does. If you look at the sixth sub-division of section three in connection with section twelve, the work is wholly and completely done. And as it now reads I regard it as entirely unnecessary. The Legislature may provide "for the support and maintenance of common schools in each school district in the State." Support and maintenance! also the second—"any residue of such funds shall be appropriated to the support and maintenance of academies and normal schools and schools of an intermediate grade between the common schools and the University, and the purchase of suitable libraries and apparatus therefor." Now read right after that the twelfth—"No sectarian instruction shall be allowed in any school or institution supported by the public funds set apart for educational purposes." "No sectarian institution" etc., and can any one doubt but that you have driven the nail fast and fixed it? I have no objection to the amendment only that it does not look well when construed with the other section of the bill.

The motion was not agreed to.

The section as amended was agreed to.

Mr. STRICKLAND. I move that the Committee do now arise and report progress.

Motion agreed to.

The CHAIRMAN. Mr. President, your Committee have had under consideration the report of the Committee on Education, School Funds and Lands, and report progress and ask that the report be re-committed to the Committee on Education for amendment.

Mr. McCANN. I move that the Convention do now resolve itself into Committee of the Whole for the further considering the report of the Committee on Bill of Rights.

The motion was withdrawn.

The PRESIDENT. The report of the Committee will be considered adopted, unless some gentleman objects.

Mr. McCANN. Mr. Chairman, I move we now resolve ourselves into Committee of the Whole upon the report of the Committee on Bill of Rights.

Leave of Absence.

Mr. PHILPOTT. Mr. Chairman, I ask leave of absence for my colleague, Mr. Robinson, for one hour from four o'clock.

Leave granted.

Committee of the Whole.

The PRESIDENT. You have heard the motion—to go into Committee of the Whole upon the report of the Committee on Bill of Rights.

The motion was agreed to and the Convention went into Committee of the Whole, with Mr. Griggs in the Chair.

The CHAIRMAN. Gentlemen of the Committee, we now have under consideration the amendment offered by the gentleman from Nemaha, (Mr. Thomas) to Sec. 8. as follows:

"Provided, that the Legislature may provide for the trial of criminal offences in any or all cases without the intervention of a grand jury."

Mr. WAKELEY. Mr. Chairman, I will read for information, a section which I will propose as a substitute for section 8, and I shall move to amend the amendment of the gentleman from Nemaha, by striking out section 8, and insert as follows:

"No person shall be held to answer for capital or otherwise infamous crime unless on a presentment or indictment by a grand jury, or information by a public prosecutor, except in cases arising in the army and navy or militia when in actual service in time of war or public danger, and provision should be made by law for the empannelling of grand juries whenever the respective courts or judges thereof shall order."

Mr. WAKELEY. Mr. Chairman, I have used the language employed in the Constitution of the United States relating to criminal and infamous offences.

The Secretary read the amendment.

Mr. WAKELEY. Mr. Chairman, I have but a few words to say in support of the amendment, and I don't care to renew the discussion which was had the other day, upon the expediency of abolishing the grand juries. I have understood, from the tenor of the remarks of the gentlemen who thought it advisable to dispense with grand juries that they were in favor of leaving the matter with the Legislature, and let that body try the experiment of doing away with grand juries but with power to restore the system if it was thought best. I think this provision meets the views of those desirous of leaving the matter with the Legislature and yet leaves it so that when the judges of the court deem it necessary, they may empannel a grand jury. I speak for one of those who have doubted the wisdom of abolishing the grand jury, but I say if the Legislature deem it proper to dispense with the grand jury, I don't see that any particular harm can be done. I don't wish to be bigoted or captious with reference to any views that I may have. I would like to hear from the gentlemen who have advocated the other side of the question and to know if this will not be satisfactory.

Mr. THOMAS. Mr. Chairman, I would like to have the amendment read again.

The Secretary reads the amendment.

Mr. LAKE. Mr. Chairman, If I understand the proposed substitute it is all—so far as I am concerned, as one of the members of the Convention favoring the dispensing of grand juries—it is all I ask. It does however, go farther than the proposition of the gentleman from Nemaha (Mr. Thomas.) It provides, in case grand juries are dispensed with that prosecutions shall be conducted as they are now conducted in Michigan. We have the assurance of the Chief Justice of Michigan that that system has been adopted 12 years ago and gives general satisfaction. It is now seldom that a grand jury is empanneled in Michigan. I am anxious that this safe guard shall be thrown around the Legislature. Believing that this substitute secures substantially that which we were asking, I am willing to accept it, I see no covert object, here it reads, as follows:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment by a grand jury, or information by a public prosecutor, except in cases arising in the army and navy or militia when in actual service in time of war or public danger, and provision shall be made by law for the empannelling of grand juries whenever the respective courts or judges thereof, shall order."

This seems to confer upon the Legislature the right and authority to say that a person may be prosecuted by information—it seems to be by indictment or information by a public prosecutor, except in certain cases. I am desirous of seeing this reform practiced in Nebraska. I trust this amendment will commend itself to the gentlemen who have acted with me and the gentleman from Nemaha (Mr. Thomas) on this question.

Mr. THOMAS. Mr. Chairman, I am perfectly willing to accept this substitute, that is just what we wanted. I am not in favor of doing away entirely with this system, but of leaving it to the Legislature. I will withdraw my amendment and support this substitute.

Mr. ESTABROOK. Mr. Chairman, I object to the substitute. In the first place it recognizes capital punishment, I am opposed to that and hope we will abolish it. There is one phrase that I cannot understand why it is here, and if there is any gentleman here that can see its propriety here he must be able to understand the language better than I, and that is "otherwise infamous crime." That appears to be drawn from the ancient laws where I believe it meant taint of blood and a forfeiture of goods and other chattels, but, sir, we know no such thing in this country, and I hope we will take this one additional band off of our heads and let our brains work a little more free. I move to amend by striking out the words "otherwise infamous crime."

Mr. STRICKLAND. Mr Chairman, I do not intend to occupy much of the time of this Committeee today. I am willing the matter should be acted upon by the Committee and indeed the amendments substantially leaving to the courts the authority on proper occasions to call a grand jury and also delegating authority to the Legislature in the premises is a great improvement upon the old system, but I am directly and absolutely opposed to the whole grand jury system and I will be until the last day of this Convention for good and sufficient reasons which with those I have presented heretofore I shall continue to present until the subject matter is dispensed with. Among other things of great importance for the consideration—not the least is the question of expenditure. The grand jury system is one of the most expensive of any or all of the expenses attached to the machinery of the judiciary of the state. I assert what I stated before that I believe it will constitute one third of the entire expense of our courts. I mention this in order to show the enormous expense attending a most useless and worthless system. There are other and greater reasons for the entire abolition of the whole system—I was struck forcibly with the remark of my colleague, Judge Lake, that the advocates of the system failed to produce any special reasons or good arguments for its retention except it was a time honored institution. It is well enough to remind gentlemen that the royalty of Kings and their divine right to rule for hundreds of years were recognized as time honored institutions. The grand jury system has been dragged along for many hundred years, through ages of progression with other things, a dead corpse as antiquated as the Egyptian mummies without any reasons for its retention. It is in vain that we hunt for its origin. I have waded through the leaves of many a musty book and have solicited information from many of my more learned brethren in the law all to no purpose. The gentleman from Otoe in his remarks on this question presented some reasons in favor of the grand jury system which I propose to notice. One was that 16 men were better to present a man on indictment than one man, but in his speech here to-day on the question of school funds he argues that one man was better than 16 or 100—to use a homely phrase "what is sauce for the Goose is sauce for the Gander." If one man is better in the last case he is better in the first. The grand jury sits in secret conclave and as I said the other day and as will be seen by the statutes hears but one side of the testimony in the case and each honest grand juryman acting under his conscientious convictions is compelled to find in many cases upon ex parte testimony an indictment. When in many cases if the examination was public and the accused had the opportunity of facing his accuser he could explain away the last shadow of suspicion against his good reputation. I exceedingly regret that the gentleman from Otoe did what I never yet found it necessary to do in a deliberative body, descended to personalities in which he said the gentleman may be in the situation of the boy who got bitten by a dog and ever afterwards hated the dog. I will say in answer to the gentleman that if I should see an old dog lying around loose without an owner no one knowing from whence he came, cross and snarling, exhibiting signs of hydrophobia and he had bitten my neighbor or my neighbor's children, and threatened to bite my child in his paroxysms of madness I would find a double barrelled shot-gun and go hunting for that dog. A grand jury sitting in secrecy with closed doors acting in the dark upon ex parte testimony—acting indiscriminately upon the liberties of our citizens is far more dangerous to honest character than the bite of a rabid dog. If a high official were accused of malfeasance in office or a high judicial officer accused of trading and bartering judicial decisions as merchandise or accused of purloining county bonds, or any person accused of horse stealing, it would not be necessary for the intervention of a grand jury to bring parties to a proper trial. Information and prosecution before a traverse jury would be sufficient. How is it possible that a grand jury can arrive at a reasonable certainty of guilt or innocence when by law they can and do only examine one side of the case? Perhaps those that know the most about the case before them are not summoned and yet the honest intelligent grand juror has to act under the ban of the law. Having heard but the one side, the accusation. It will not do to say that timid witnesses may go before a grand jury for purposes of securing justice to the state in the punishment of criminals, for the fact is the grand jury is only an accusatory body and the same witnesses if conviction is had and public justice attained have to appear before a court and traverse jury exposed to the severest criticism by way of cross examination, meeting face to face in open day light the accused. Can any grand jury however intelligent and honest arrive at a just conclusion when by law they can hear only one side and that in secrecy—what offence known to the laws of the land is there in free and enlightened Nebraska that a grand jury could bring to light, that an upright and able prosecutor would not? Would a conscientious and learned prosecutor relying upon the justice of his motives be liable to prosecute frivolous cases or omit to pursue with the vigor of the law the offending and the guilty? Why entail upon the state government the unnecessary expenses of two prosecutions when one will answer the purpose of justice and punishment of crimes. Better get rid of the barbarous and anti-republican system at once and rid the tax payers of its enormous expenses. It is useless for the sticklers for this system to urge its age as a reason for its continuance without exhibiting some other and more practical reasons why it should be retained. The reasons given by the friends of grand juries are about as sensible as in a given case in point. A certain young General in old England who afterwards acquired a world wide fame, having been appointed to the command of a post, being a practical utilitarian looked about over his new command and the surroundings and found that after the necessary guards had been detailed each day for service, a guard pacing to and fro in front of a fence. On inquiry of the Adjutant of the post he was unable to find the object or use of said guard. Upon pursuing his inquiry further it was found that the guard had been placed in front of the fence twenty-six years before at which time the fence had been newly painted to keep persons off and preserve the paint. The order creating such guard was limited to five days. The officer whose business it was to discontinue said guard had neglected his duty. So through the many ages of civilization, progression and reform no one knowing for what a grand jury was instituted or able to assign any good reason for its continuance we have neglected our duty and continued them without knowing why.

After a fruitless search to find where the grand jury was first inaugurated, I have given up in despair, but I will take occasion to quote from an author well known throughout this continent giving his description of what was anciently a species of grand juries and their workings, I allude to Mark Twain in his "Innocents Abroad." He is describing the Doges of Venice and their manner of visiting punishment upon political offenders by marching them over the "Bridge of Sighs." He says, "At the head of the giant staircase where Marino Faliero was beheaded and where the Doges were crowned in ancient times two small slits in the stone were pointed out, two harmless insignificant orifices that would never attract a stranger's attention. Yet those were the terrible Lion's Mouths, these were the throats down which went the anonymous accusations thrust in secretly at dead of night by an enemy that doomed many an innocent man to walk the "Bridge of Sighs" and descend into the dungeon which none entered and hoped to see the sun again. This was in the old days when the politicians alone governed Venice. There were one thousand five hundred patricans—From these three hundred Senators were chosen —From the Senators a Doge and a Council of ten were selected and by a secret ballot the ten chose from their own number a council of three. All these were government spies. Men spoke in whispers in Venice and no man trusted his neighbor—not always his own brother. The members of that dread tribunal met at night in a chamber by themselves. It was their duty to judge heinous political crimes —a nod to the executioner was sufficient—the doomed man was marched down the hall and out at a door way into the covered Bridge of Sighs, through it and into the dungeon and unto his death. If a man had an enemy in those old days the cleverest thing he could do was to slip a note for the Council of three into the Lion's mouth saying this man is plotting against the government. If the awful Three found no proof ten to one they would drown him anyhow because he was a deep rascal since his plots were unsolvable. This is the kind of grand jury they had in those days. We can liken it unto the secret inquisition and persecution of to-day by our grand jury.

Mr. MASON. Mr. Chairman, since this discussion opened I have, so far as I could, made inquiry as to the practical results, where the grand jury system has been in part abrogated. I invited a personal acquaintance to write me as to the practical workings of the system in his state, and I read his letter in part.

"We did not entirely abolish the grand jury system in this state (Michigan), but allow one to be summoned at any time when deemed necessary by the judge and prosecuting attorney. When one is called the party can only be put upon the trial upon information filed by the prosecuting attorney and which must be passed upon before a magistrate and held to trial by him. The general sentiment, in which I concur, is that grand juries except in very peculiar cases have become unnecessary, it is very rare indeed that one is summoned in this state."

This is all upon that subject, it is signed by T. M. Cooley, Michigan.

This information together with other information has induced me to favor the amendment offered by Judge Wakeley. I am not one of those, sir, who are disposed to fly from the evils we have, to those we know not of ordinarily, and, sir, I regret that in my discussions in this Convention, no gentleman should have seen fit to apply any dreamy reminiscence to himself, certainly I shot no arrows at anyone personally, but if the bird was hit it was not in my thought, and with this I am content to adopt the amendment here presented. I see no necessity for retaining the words "infamous crimes." I think the gentleman was correct in defining infamous crimes, any offense that works a forfeiture of goods, chattels and corruption of blood. I deem it but just to say to this Convention that while my views have been modified by the suggestions from my friends on the other side, and the arguments offered; I did hear some arguments that convinced think ours was at that time. But with me that the other side was not quite as barren as some of the opposition me one year's practice is worth all the theories in the world. And what had more weight in convincing my judgment or leading me to deviate from the course I had thus marked out was the communication I have read, together with one or two others which I have received from other sources. And hence I am content with this amendment.

Mr. THOMAS. I would like to ask the gentleman from Douglas (Mr. Estabrook) what his amendment was.

The CHAIRMAN. It was to strike out the words "or otherwise infamous crimes".

Mr. THOMAS. Mr. Chairman; I have drawn an amendment, corresponding with the section we have now, changing it only as proposed by Judge Wakeley. It reads:

"No person shall be held to answer for criminal offense, except in cases in which the punishment is by fine or imprisonment or otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy or in the militia, when in actual service in time of war or public danger, unless on a presentment or indictment of a grand jury, or information of a public prosecutor. And provisions shall be made by law for the empanelling of grand juries whenever the respective courts or the judge thereof shall order."

Mr. WAKELEY. Mr. Chairman, I have no objection to the change suggested by the gentleman from Nemaha. If he will offer that as a substitute to the section, I will withdraw mine.

The substitute of Mr. Thomas was agreed to.

The Secretary read section nine, as follows:

¶ 9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf; and speedy public trial by an impartial jury of the county or district in which the offence is alleged to have been committed.

Mr. ESTABROOK. I move its adoption, sir.

Motion agreed to.

The Secretary then read section ten, as follows:

¶ 10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offence.

Mr. MAJORS. I move its adoption.

The motion was agreed to.

The Secretary read section eleven, as follows:

¶ 11. All penalties shall be proportioned to the nature of the offense; and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offense committed within the same, nor shall cruel and unusual punishment be inflicted.

Mr STRICKLAND. I move its adoption.

The motion was agreed to.

The Secretary read section twelve, as follows:

¶ 12. No person shall be imprisoned for debt, arising out of,or founded on a contract express or implied. except in cases where there is strong presumption of fraud.

Mr. MAJORS. I move its adoption.

The motion was agreed to.

The Secretary read section thirteen, as follows:

¶ 13 Private property shall not be taken or damaged for public use without just compensation. Such compensation when not made by the state, shall be ascertained by a jury as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it was taken.

Mr. MASON. I desire to amend so as to require, in every instance, that the actual value of the property shall be paid for in money without any deductions for supposed benefits.

Mr. WAKELEY. I would like to say a word upon the subject. I understand that to be an unquestionable rule of the law at this time. I believe it to be well settled by the courts in construing precisely such provisions as this, that no supposed benefits can be offset against the value of lands taken. And I do not believe the provision to be necessary. It seems to me to be rather admitted that without such a provision the contrary rule might be adopted. If I can be satisfied of its necessity I will support it.

Mr. MASON. I apprehend that the rule of law will be found to be that where property is taken the party derives peculiar benefit owing to the improvement for which it is taken, over and above that which immediate owners or parties do derive—that in that instance the peculiar benefit may be offset against the damages. I move to insert "previously paid in money" after the word "compensation," where it first occurs.

Mr. THOMAS. I think there are two questions here. One whether it be paid partly in money or in benefits. And the other is whether it shall be paid before the property is taken or damaged. I like the 19th section, Article I in the Ohio Constitution, which reads as follows:

> Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure, or for the purpose of making or repairing roads, which shall be open to the public without charge, a compensation shall be made to the owner in money, and in all other cases where private property shall be taken for public use, a compensation therefor shall be first made in money; and such compensation shall be assessed by a jury without deduction for benefits to any property of the owner.

Now I desire to see this amendment introduced, so that the possession shall be first paid or first secured; and then that it be secured in money and not in benefits.

Mr. LAKE. It seems to me that the entire section will have to be changed in order that great mischief may not accrue. The section under consideration, with the amendment proposed by the gentleman from Otoe, without any other change, would require compensation in all cases before private property could be taken. Now, there are many cases that could be conceived of where private property ought to be taken. For instance, in the making of a highway, or the building of a bridge. For the purpose of securing these repairs before the money can be raised by taxation or some other mode—in all such cases public officers ought to have the right to take private property for such uses. If a just compensation in money, in these cases, is secured for the property, that ought to be sufficient. The entire section ought to be modified so that private property can be taken by public officers in certain cases without compensation first being made. I see no objection to the clause being amended so that in certain cases this can be done. In all cases where it can be done—where the owner can be ascertained, etc., I am in favor of compensation being first made where it can be done without great embarrassment to the public. I am opposed to modifying this section with the understanding that no other amendment is to be made and that it is to be applied to all cases. In this new country, it frequently occurs that roads are to be opened for public travel, before the money can be raised by the ordinary modes of taxation. Now where the entire public faith is pledged for the payment of a just compensation, is it a great hardship for the owner of property taken to wait until he is paid in the way laid down by law? I can see many cases where this would work great injury to the public, with no great advantage to the owner of the property. I am in favor of this principle being applied to Railroad companies, where the land of individuals is taken for railroad purposes. Individuals compose the company and they should be prepared to pay money in such cases. Where the property of individuals is taken for their benefit, I believe that the principle should be applied, but where the public is under the necessity of using private property—it may be stone for bridges, abutments, etc., timber and the like it may take private property without first paying therefor.

Mr. THOMAS. Mr. Chairman, I agree entirely with the gentleman who has just spoken. It did not occur to me at the time I drew up the amendment. Where the public faith is pledged, I think it would be all that is necessary. I propose to substitute the corresponding section in the Ohio Constitution for our section.

Mr. MASON. Mr. Chairman, I move to strike out the section now under consideration and substitute section 19 in the Bill of Rights of the Ohio Constitution, as follows:

"Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure, or for the purpose of making or repairing roads, which shall be open to the public without charge, a compensation shall be made to the owner, in money and in all other cases where private property shall be taken for public use a compensation therefor shall be first made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefit to any property of the owner."

Mr. WAKELEY. Mr. Chairman, while I don't disagree materially with the gentleman with regard to the general structure of this section, I don't like the Ohio provision just read. It seems to me it is long and cumbersome. I think it is defective too, for instance, it does not include the word "damaged." Their Constitution provided simply, that private property shall not be taken for public use without just compensation. That is the provision of the section just read, then again the Ohio section does not include the last provision of this section, to-wit:

"The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners subject to the use for which it was taken."

I regard this a very valuable provision and it is not found in the corresponding section of the Ohio Bill of Rights. It seems to me this section should be re-committed to the Committee on Bill of Rights. I will make that motion, at the proper time.

Mr. MASON. Mr. Chairman, I withdraw my motion.

Mr. ESTABROOK. I think the proper course is this; that this section (13) be reported to the house with the recommendation that it be referred to the Committee on Bill of Rights, and make a motion to that effect.

The motion was agreed to.

The CHAIRMAN. The Secretary will read section fourteen.

The Secretary reads as follows:

¶ 14. No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed."

Mr. SCOFIELD. Mr. Chairman I move the section be adopted.

Motion agreed to.

The CHAIRMAN. The Secretary will read section 15.

The Secretary read as follows:

"¶ 15. The military shall be in strict subordination to the civil power."

The CHAIRMAN. No objections being heard, the section will be considered adopted. The Secretary will read section 16.

The Secretary read as follows:

¶ 16. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war except in the manner prescribed by law.

The CHAIRMAN. No objections being heard the section will be considered adopted.

The Secretary will read section 17.

The Secretary read as follows:

¶ 17. The people have a right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances.

The CHAIRMAN. No objections being heard, the section will be considered adopted.

The Secretary will read section 18.

The Secretary read as follows:

¶ 18. All elections shall be free and there shall be no hindrance or impediment to the right of a qualified voter to exercise his franchise.

Mr. HASCALL. Mr. Chairman, I move to amend by adding "but laws may be made to ascertain by proper proofs the citizens who are entitled to the right of suffrage."

Mr. PHILPOTT. Mr. Chairman, I wish to amend the section by substituting the words "the elective" for the word "his."

The amendment of the gentleman from Lancaster (Mr. Philpott) was agreed to.

Mr. ESTABROOK. Mr. Chairman, I would like to inquire what is meant by the words "all elections shall be free."

Mr. WAKELEY. I understand that to mean that no voter shall be intimidated, but shall be allowed to exercise free choice as to who he votes for.

Mr. LAKE. I suppose it means that there shall be no charge made, but a man shall be allowed to vote without it costing him anything.

Mr. WAKELEY. I would inquire of my colleague (Mr. Hascall.) what he means is the necessity for offering such a qualification to the section. Does he conceive that the registration law is not complete. It seems to me that the law as it is is just right, and I cannot see any necessity for adding to it.

Mr. HASCALL. Mr. Chairman, in answer to the gentleman I will state that I am satisfied that the gentleman himself would say, if this section was passed as it is, that no registration could be had. One reason is this that in another bill we will determine who are to exercise this elective franchise. I have heard men say that the registration laws are hindrances to the free exercise of this right, and if this section was placed in the Constitution as the supreme law of the land no registration could be made. I am in favor of a proper registration law, and this amendment leaves it to the Legislature to determine. It is necessary that this should be put in here that they may be taken together.

Mr. LAKE. Mr. Chairman, I am as heartily in favor of wholesome registration laws as any individual of this Convention can possibly be. I believe with my colleague that a better registration law could be enacted than the one we have that would not permit a man to be cheated out of his vote, but I do not agree with him that this section would preclude the passage of wholesome registration laws. It says that the elective franchise shall be free and without hindrance, but certainly the Legislature would have the right to determine who are qualified voters, and they would have the right to adopt any reasonable mode to ascertain that, and lay down some rules by which the officers of the election shall be governed. You might as well say that a man should not be challenged on election day, or sworn to his qualifications to vote.

Mr. HASCALL. I have concluded it is better to put this in as an independant section and not encumber the Bill of Rights with it, so I will withdraw my amendment,

The CHAIRMAN. The question is on the adoption of section as amended.

The eighteenth section was adopted.

The Secretary read section nineteen as follows:

¶ 19. Treason against the state shall consist only in levying war against the state, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The section was adopted.

The Secretary read the next section as follows:

¶ 20. The writ of error shall be a writ of right in all cases of felony, and in all capital cases shall operate as a supersedeas to stay the execution of the sentence of death until the further order of the supreme court in the premises.

The section was adopted.

The Secretary read the next section as follows:

¶ 21. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debts or liability.

The section was adopted.

The Secretary read the next section as follows:

¶ 22. Aliens, who are, or may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens.

The section was adopted.

The Secretary read the next section as follows:

¶ 23. Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay.

The section was adopted.

Mr. MYERS. Mr. Chairman, I move to strike the words "ought to" and insert "shall."

Mr. MANDERSON. Mr. Chairman, I called the attention of the chairman of the Committee on Bill of Rights to the provision of the Ohio section; I understand it meets his approval.

"All courts shall be open and every person for an injury done him in his land, goods, person or reputation, shall have remedy by court of law, and justice administered without denial or delay."

I move that be substituted for section twenty three.

Mr. MYERS. I withdraw my amendment.

The substitute was agreed to.

The Secretary read the next section as follows:

¶ 24. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

The section was adopted.

The Secretary read the next section as follows:

¶ 25. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinbefore expressly directed or permitted.

The section was adopted.

The Secretary read the next section as follows:

26. This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people.

Mr. STRICKLAND. I would ask that we now consider the preamble.

The Secretary read the preamble as follows:

The Constitution of the State of Nebraska.

PREAMBLE.

We, the people of the state of Nebraska—grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and posterity, do ordain and establish this constitution for the state of Nebraska.

Mr. STRICKLAND. I move its adoption.

The motion was agreed to.

Mr. MYERS. I move that the Committee now rise, report progress and ask leave to sit again.

Mr. HASCALL. I move to amend by inserting "and recommend the adoption of the amendments, and that section thirteen be re-referred to the Committee on Bill of Rights."

Mr. MYERS. I accept the amendment.

The motion was agreed to.

Mr. GRIGGS. Mr. President, the Committee has had under consideration the Article entitled "Bill of Rights" and have directed me to report progress and ask leave to sit again, and recommend that section thirteen of the report be referred to the Committee for further consideration.

The report was adopted NEM. CON.

Adjournment.

Mr. CASSELL. I move to adjourn.

The motion was agreed to, and the Convention (at five o'clock and thirty minutes) adjourned.

NINETEENTH DAY.

Friday, July 14, 1871.

The Convention met at nine o'clock a. m. and was called to order by the President.

Prayer.

Prayer was offered by the Rev. Mr. Merrill of Nebraska City, as follows:

Our Heavenly Father, Great Ruler of nations, we ask thy blessing upon this assembled body to-day. Guide them in all their deliberations that the great ends of justice and right may be answered, in all that they do. May Thy blessing attend them and Thy smile rest upon them, for Christ's sake. Amen.

Reading of the Journal.

The Journal of the preceding day was read by the Secretary and approved.

Mr. GRAY. At the request of the Chairman of the Committee on Internal Improvements, I beg leave to make the following report.

Mr. President:

Your Committee on Internal Improvements beg leave to submit the following report and ask that the same be made a part of the Legislative Article to-wit:

In Section 48 of said Article add the following: "and shall enact such laws as may be necessary to facilitate the construction of Bridges." And to Section 49 of said Article add the following: "And may provide for draining wet or overflowed lands, giving the County Commissioners of any county authority to construct ditches and drains for that purpose, and levy and collect taxes upon the lands to be benefited by such drainage to pay the expense of constructing and keeping in repair such ditches and drains.

JACOB SHAFF,
Chairman.

The PRESIDENT. The question is that the rules be suspended and that this report be referred to the Committee of the Whole to be considered in connection with the Legislative Article.

The motion was agreed to.

Judiciary.

Mr. LAKE. Mr. President. The Committee on Judiciary and Judicial Districts beg leave to report the following Article, and recommend its adoption.

(Report Missing Here.)

The PRESIDENT. Unless some gentleman objects it will be read the first time and second time by its title, 150 copies ordered printed, and referred to the Committee of the Whole.

No objection being made it was so ordered.

School Fund.

Mr. MASON. Mr. President. I am instructed by the Committee on Judiciary to report the following, in respect to the inquiry referred to them by the Committee on Schools:

Your Committee are of the opinion that the State is bound to restore to the school fund all losses which that fund has, or shall hereafter sustain while the present Constitution remains in force.

The State in its corporate capacity receives the school monies arising from the school lands and is made a trustee for that fund and charged with the duty of preserving the same inviolate and undiminished.

The State undertakes to administer the trust confided to it by the Constitution and in the manner required by that instrument.

The Constitution requires that the principal of all funds, arising from the sale or other disposition of lands or other property granted or entrusted to the State for educational and religious purposes, shall forever be preserved inviolate and undiminished. The funds named in the resolution were entrusted to the State for school purposes and the State is bound to preserve the same inviolate and undiminished by the express language of the Constitution. If the State in the administration of this trust employs imp ovident or corrupt agent, or officers and the fund is lost or diminished, the State ought to make good such loss or diminution.

O. P. MASON,
By Instruction of Committee.

Resolution.

Mr. CURTIS. Mr. President, I desire to offer a resolution:

The Secretary read the resolution as follows:

That the question of female suffrage in this state shall be decided by the females alone; and the right of females to vote in this state shall be submitted to them as a separate proposition by the county commissioners in each county in the state by appointing registrars in each precinct and ward whose duty it shall be to visit each family in their precinct or ward, and register the name and vote of each female member thereof on the proposition of female suffrage, and that each female shall have the privilege of registering and voting under the same restrictions as the male voters and said registrars shall take and make returns of said vote under oath, on or before the last day of November next to the county clerks of their counties and said county clerks shall make returns of said votes to the Secretary of State at the time and in the manner of making the returns of the vote on the Constitution. If it shall appear that a majority of the female voters have voted for female suffrage the proposition shall be a portion of the Constitution of this State.

Mr. PHILPOTT. Mr. President: I move that the resolution be referred to a special committee of which Mr. Estabrook may be chairman.

Mr. GRIGGS. Mr. President: I move to amend by referring to the Standing Committee on Rights of Suffrage.

Mr. WAKELEY. And I move to amend by referring it to the Committee of the Whole.

Mr. TOWLE. I move that further consideration of the resolution be indefinitely postponed.

The ayes and nays were demanded.

Mr. MYERS. I believe I understand this for myself, that it is to be a test vote.

The PRESIDENT. I do not know what it is to be. It is a vote. The question is upon the indefinite postponement.

The Secretary again read the resolution.

Mr. McCANN. Mr. President: I move a call of the house.

The Secretary called the roll.

Mr. McCANN. I move that the sargeant-at-arms be sent for Messrs. Estabrook and Robinson.

Mr. TOWLE. I move that the further business under call of the House be dispensed with.

The House divided, when there appeared 23 in the affirmative and 20 against.

So the motion was agreed to.

The PRESIDENT. The further proceedings under call of the House are dispensed with.

Mr. MASON. Mr. President: By leave of the Convention, I desire to make a few remarks. I sincerely hope the Convention will not indefinitely postpone this question; for I believe in giving every gentleman a chance to be heard upon so important a question as this. I hope it may be referred, and the resolution fairly considered.

Mr. TOWLE. In answer to the gentleman—

The gentleman was called to order, but was subsequently granted leave to speak.

Mr. TOWLE. In answer to the gentleman from Otoe (Mr. Mason) I would state that we have on our table now the report of the Committee, which will bring this whole subject matter up; and it is entirely improper to consider a resolution upon a subject already involved in the report of the Committee.

Mr. McCANN. Mr. President: I regret very much that the opponents of this question cannot afford debate—

The gentleman was called to order by the Convention.

The PRESIDENT. This is not the time for debate, but if the House grant leave to the gentleman he will be allowed to proceed, as will any other gentleman who desires to say a few words.

("Leave." "Leave.")

Mr. McCANN. Mr. President: I

do not propose to debate. I merely wish to say that the motion to refer this to a committee is certainly the most honorable way to get rid of it. I hope the motion to indefinitely postpone will not prevail for that very reason. I wish the question to be carefully considered, and all others which affect the right of suffrage.

The PRESIDENT. The question is upon the indefinite postponement.

Mr. WAKELEY. By leave of the Convention, I wish to say a few words.

("Leave." "Leave.")

I believe it proper to raise the point of order that a motion to indefinitely postpone is debatable. Mr. President: thanking the Convention for leave to say a few words, I do not propose, from this incidental motion to discuss the question of female suffrage. There is pending in some form, before the Convention, a proposition to allow the women of this State to vote at the coming election, when the Constitution shall be submitted, upon this question of extending the elective franchise to females. This is but a modification of the same proposition. This is a proposition to take the sense or judgment of the women of this State in respect to extending the elective franchise to them. And, sir, in my judgment, it is a much better and more appropriate method of ascertaining the wishes of the women of this State, than the proposition requiring them to go to the polls and vote upon the subject. In submitting this question to the women of this State in a manner which requires them to go to the polls and vote for or against the proposition, you do but require of those who are opposed to exercising the elective franchise to do precisely what they are principally against doing—going to the polls in a public manner and depositing their ballot. Now, sir, what fairness is there to say to the women of Nebraska, "We submit to your judgment whether you shall have the elective franchise or not." And in order to get the voice of those who are opposed to voting, to go to the polls and exercising the elective franchise, you require them to do the thing they do not believe in doing. I am for one sincerely desirous of ascertaining what the women of the State of Nebraska desire in respect to exercising the elective franchise. I speak only for myself. I have long been committed to this principle—that when even the women of this land, as a general thing, whenever a majority of the intelligent women of this country desire to exercise the elective franchise, are wiling to take upon themselves that responsibility, and will say so, so far as I am concerned, sir, they shall have it. I will never stand with the ballot in my hand and say to one half of the human race who desire to exercise that right, that they shall not have it. I may not consider it a wise thing for them to do; I may not vote—and will not—to give the elective franchise to the women of this State, but sir I am desirous to give them a right to express themselves on this subject. In my judgment, the plan proposed is a better one than to require them to go to the polls and vote against the exercise of this franchise. I think this is an absurdity in itself. If sir, the sense of the women of Nebraska can be taken in a way which will not offend their sense of delicacy and propriety, I will give every influence here to afford them the opportunity. Now sir, I hope this resolution will not be indefinitely postponed. I hope it will go to the Committee of the Whole. When this question of female suffrage comes up in the Convention, as it will come up, and give it a fair and impartial consideration.

Mr. CURTIS. Mr. President: I would like to have a word to say, if I may be allowed.

("Leave." "Leave.")

I ask that this resolution be referred to a proper Committee, leaving it to the Convention what Committee that shall be.

The PRESIDENT. The question is upon the indefinite postponement.

Mr. TOWLE. Mr. President: I withdraw my motion to postpone with the consent of my second.

The PRESIDENT. The question now is upon the motion to refer the resolution—

Mr. MASON. Mr. President: I am requested by the mover of this resolution to say that he prefers to have it referred to the committee of the Whole house.

Mr. TOWLE. Mr. President: I renew my motion to indefinitely postpone the resolution.

The PRESIDENT. The question is upon the motion to indifinitely postpone the resolution.

The yeas and nays were ordered, and being taken, resulted—yeas 20, nays, 27—as follows:

YEAS—20.

Abbott,
Boyd,
Campbell,
Eaton,
Gibbs,
Granger,
Gray,
Griggs,
Hinman,
Myers,
Newsom,
Parchen,
Scofield,
Sprague,
Stevenson,
Thummel,
Towle,
Vifquain,
Weaver,

NAYS—27.

Ballard,
Cassell,
Curtis,
Estabrook,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
McCann,
Majors,
Mason,
Manderson,
Maxwell,
Moore,
Neligh,
Philpott,
Price,
Reynolds,
Shaff.
Spiece,
Stewart,
Thomas,
Tisdel,
Wakeley,
Wilson,

ABSENT OR NOT VOTING.

Grenell,
Parker,
Robinson,
Woolworth,
Mr. President,

So the motion of Mr. Towle to indefinitely postpone the resolution of Mr. Curtis, was not agreed to.

The PRESIDENT. The question now is upon the motion to refer to the Committee on Rights of Suffrage.

The Secretary will read the resolution.

The Secretary read the resolution again.

The Convention divided and the motion was agreed to.

Mr. CASSELL. Mr. Chairman: I desire to offer two resolutions.

The Secretary reads the resolutions as follows:

RESOLVED: That convicts shall not be employed on work out-side the prison walls.

RESOLVED: That it shall not be lawful for any members of this Convention to be a candidate for any of the offices created or provided for in this Convention, for the period of one year.

Mr. CASSELL. Mr. Chairman: I desire to have the first of those resolutions referred to the Committee on Reformatory Institutions.

The PRESIDENT. It will be so referred unless some gentleman objects.

Mr. MASON. Mr. President: I move to refer the opinion asked for by the Committee on Education, etc., be referred to that Committee.

The PRESIDENT. It will be so referred unless some gentleman objects.

Mr. PARCHEN. Mr. President: I wish to offer a resolution.

The Secretary read the resolution as follows:

RESOLVED: That the Constitution of Nebraska be so construed as to strike out the word "male" and insert "female" in the Article on Suffrage.

Mr. PARCHEN. Mr. President: I move to refer the resolution to a special committee consisting of George Francis Train and Victoria Woodhull.

Mr. MANDERSON. Mr. President: I move that the gentleman who moves the reference be added to the committee.

Mr. ESTABROOK. As chairman of course.

Mr. MASON. Mr. President: I rise to a point of order, I suppose it is not in order for this Convention to refer a motion improperly.

The PRESIDENT. I think it is out of order.

Mr. MYERS. I move that the President declare the whole thing out of order. I object to these proceedings.

The PRESIDENT. I think the objections of the gentleman are well taken.

Mr. HASCALL. Mr. President: I move that it be indefinitely postponed.

Mr. PARCHEN. Mr. President: I ask leave to withdraw the resolution.

The PRESIDENT. No objection being made leave is granted and the resolution is withdrawn.

Section 13 of Bill of Rights.

Mr. THOMAS. Mr. President: If there is no objection I desire to offer a report from one of the Committees.

By request of the Chairman I will offer the following report:

Your Committee on Bill of Rights to whom was re-committed Section 13 of the Article entitled the Bill of Rights would respectfully report the following Section, the adoption of which they recommend, in lieu of Section 13, originally reported.

The Secretary read the report as follows:

Private property shall ever be held inviolate, but subservient to the public welfare. When taken or damaged for public use in time of war or other exigency imperatively requiring its immediate seizure, or for the purpose of making or repairing roads, which shall be opened to the public without charge, a compensation shall be made to the owner in money and in all other cases a compensation shall be first made in money, or first secured by a deposit of money. Such compensation shall in every case be without deduction for the benefits to any property owner, and when not made by the State, shall be assessed by a jury in such manner as shall be prescribed by law. The fee of land taken for railroad tracks without the consent of the owner thereto, shall remain in such owner subject to the use for which it was taken.

Mr. THOMAS. Mr. President: I move that the report be referred to the Committee of the Whole.

The motion was agreed to.

Mr. MANDERSON. Mr. President: I move that the Convention resolve itself into a Committee of the Whole on this report from the Committee on Bill of Rights.

The motion was agreed to.

So the Convention in the Committee of the Whole—Mr. Griggs in the Chair—proceeded to consider the report of the Committee on Bill of Rights.

The CHAIRMAN. The question will be on the adoption of the substitute for section thirteen of the Bill of Rights.

Mr. THOMAS. Mr. Chairman: I will state that the first part of this section is almost a literal copy of that in the Ohio Constitution with the change that the money shall be paid first where property is taken for for other purposes than for public roads and we have inserted the word damages. The latter part of the section is copied literally from a similar section in the Illinois Constitution. I believe as it is now drawn it embraces the opinions expressed by the majority of the Convention.

Mr. MANDERSON. Mr. Chairman, I don't know that I am satisfied with the report of the Committee. There is one thing that should be considered in this report. While practicing in the State of Ohio, I had occasion to look into the Constitution of Ohio and examine the section referred to; where the question of damages are left out. Now this section submitted here says "taken or damaged." Let us inquire what that word "damaged" means. Persons or corporations taking property under the Ohio section are compelled to make oath that the damages shall be paid in money without any deduction for benefits. For instance, let us suppose that 100 feet is taken off of a man's property for railroad purposes, no benefits can be deducted from damages to the property and taken, no matter if it increases double what it was before it was taken, but the decision in the courts of Ohio was that in considering the damages of the balance of the property, not taken, the benefits may be deducted from it.

Now suppose that a party owns a town lot 200 feet square, on one corner of that lot he has a valuable building, a private corporation in the exercise of that domain delegated to it proposes to take a corner off his lot, and takes the corner upon which the building stands, it goes through his valuable building. Now under the law as it stands in Ohio, from the amount of compensation that should be paid to him for the taking of that corner, no benefits would be deducted, but suppose he had said, you have not only taken from me my corner, but damaged the balance of my lot, that is to say, you have rendered this building uninhabitable, we shall have to tear it down and rebuild in some other part of the lot; well and good, but the balance of your lot is greatly increased in value; true it is damaged by the destruction of this building but the ground left you is increased ten fold in value by the location of this railway. It seems to me it would be unfair to pay him for the land taken, without deducting for benefits he received. That has been the rule in Ohio under their law. If we adopt this section as it reads it would not be the rule here. A jury would first have to pay compensation for the corner taken, his building might be damaged to the extent of a thousand dollars, but his lot left might be benefited ten thousand dollars, yet as against that incidental damage there could be no offset of benefits if we adopt the section as reported. I would like to hear from the Chairman of the Committee on Bill of Rights on that question.

Mr. MASON. It was the purpose and design of the committee to avoid that very thing. The railroad company damages a man's property without taking it, ought not the owner to have his damages the same as though they did? Under what rule should he withold his damage because his property was not taken and perverted, it may be as effectually destroyed as though it was completely taken. Gentlemen of the committee consider the very case put by the gentleman from Douglas (Mr. Manderson). A railroad company comes through a valuable building four hundred feet long and may take two hundred feet off the land and ruin the balance, ought he not to have damages for the ruin just as honestly and fairly as damages for the property taken. Why, the committee did consider the fact of that particular damage, and it was put there with the purpose and design to give to the man whose property is taken an honest compensation. Let us consider this abstract question, if Mr. A damages the property of B, he finds a secure and perfect remedy under the law, and Mr. A must pay to B the full amount of damages done. Yet if a railroad corporation commits this damage, the gentleman from Douglas would place over and above the individual man, a man that had a soul to save, or a heaven to attain, eyes to see and ears to hear. He would put him below the corporation that has neither and place them above the individual. Your committee would put both on a level so far as the question of compensation and damages are concerned, in other words, gentlemen of the Convention, If I damage the property of a citizen, they may offset supposed or imaginary benefits against the damage they commit. The individual cannot do it, and yet it is proposed to let all corporations do so. Now, Mr. Chairman, I for one have carefully considered the whole scope and tenor of this phraseology and it does just what the gentleman from Douglas claims it does, holds the corporation which takes property for public use, to make actual compensation in money for the injury which they do without offset against that damage, any supposed benefits which they confer upon the individual. Now let us see whether this is just or not, and eminently practical in the consideration of this proposition. Here comes a railroad sweeping by the border of this town, it takes a hundred feet off a lot of any gentleman of this Convention and damages and ruins the balance. Another gentleman of the Convention, if you please myself, owns a lot adjoining which it just misses. It is just as much benefit to me as to my neighbor whose lot is ruined, and yet you make the man whose lot is ruined pay for the benefits he receives and me none at all. Is this honest? If it is, it is a school of honesty in which I took no lessons and which I hope I may ever be withheld from taking lessons. The object of this proposed amendment was to give to the private citizen full, perfect and complete compensation, not only for the property taken but for the damage done and the injury sustained to the balance of his property. Let me put another case. A member of this Convention who owns a farm in the country has a valuable stream, which to him is actually worth for practical and stock purposes more than the land itself, if he owns the land. A railroad comes along and runs between the spring and his house, cutting him off from water, the gentleman says he ought to offset the benefits which the railroad confers upon him as against the damages done to him by cutting him off from water. Is that honest? Is that what the Convention desires? Ought he not to have the actual damage done to the balance of his estate, independent of any supposed benefit? I conceive it does just what he says it does, and I for one insist that it is but the rule of honesty between man and man. Suppose I commit a trespass on my neighbor's land, and confer upon him a great benefit thereby. He sues me, what court would enunciate the rule that I can offset the benefits done him against the actual damages? It never was conceived until it was conceived in the interest of consolidated and overriding capital, and the rule finds no just support in sound reason or logic. Besides, gentlemen, this is the rule that was established in the Constitutional Convention of Illinois and they there have had considerable experience in these matters, and it may be that the word was inserted for this very purpose, and I desire to call the attention of the Convention to the Constitution of Illinois, first to the Article as found in the Bill of Rights in Ohio; second the Article as found in the Constitution of Illinois. Section thirteen reads "Private property shall not be taken for damage for public use, without just compensation." Now let us turn to the section in Ohio "Private property shall be held inviolate, but subservient to the public welfare when taken for public use." The word "damage" being omitted in the Constitution of Ohio. If this Convention desires to offset supposed benefits against actual damage done, you should strike out that word damage. If you desire to continue the unjust rule that has prevailed in Ohio, against—in my opinion— every sense of equity and right and regard for private property then the gentleman should receive the approbation of this convention. If on the contrary you desire to give to the railroad company and to the State the same rule of law which you

[hold] between individual man and man, then the Article should be adopted as it now is. Now which is right? Let me not be misunderstood, I would not assail a corporation or take one dollar from it, I would give it the same law to govern it that I gave to the individual man, but I would not give a single cent beyond but put them both on the same level. This is what your Committee had in view, and to attain this end, this word damage was specially inserted. Besides it is true, that while they were paid under the Ohio rule for the property taken, yet for the damage done to the balance they may offset benefits. Where is the justice in this? Why, if an individual came along to buy a strip of land one hundred feet wide through the farm of any member of the Convention, before you sold it you would consider the damage done to the balance of the estate, how much would it be worth? When the railroad takes the land of the individual, when they take it by the supreme law right of eminent domain, ought not the individual have the same rule of damages that he would if he sold by voluntary consent? Ought he not to have the actual damages which are done to the balance of the estate as well as the actual cash value of the land taken? This is my view of honesty. This is my rule of justice between man and man. This is the rule that your Committee saw fit to adopt. And I believe, in respect to this rule, there was not one dissenting voice. And I desire to meet this question squarely, and that the Convention may understand. If you strike out that word "damage," then the rule, as laid down by the gentleman from Douglas, may prevail—that you deduct the benefits made to the remainder of the estate, the benefits made to the individual by the construction of the road. If you leave it standing, then the actual damages done to the remainder of the estate in consideration of the benefits; and the Convention is to say which is the right rule to adopt. And I ought to say, on behalf of the Committee that we did amply consider that the word "damage" was omitted from the article in the Ohio Constitution. We turned to the Illinois Constitution; and, as an evidence of progress we found the word "damage" was inserted. What for? To meet the very evil which had existed in Ohio and other states; and we inserted the words "taken" and "damage" the same as in the Illinois Constitution. And I sincerely hope the Convention may concur in the views entertained by the Committee, giving to the owner of the property the actual cash value of the land taken, together with the actual damage to the remainder of the estate which is not taken, and not allowing the railroad company to set off any supposed benefits against the damages supposed to be done to the remainder of the estate. I think, as the article now reads, you leave the railroad company and the individual whose property is taken in precisely the same situation that two individual men would be after the property was taken, holding the company to pay the value of the property taken and the damage done to the remainder

of the property without deducting any benefits. And one case more. A has an eighty acre tract of land. The railroad strikes it in the north east corner and goes out at the opposite corner, cutting it into two parts, leaving a right angle triangle of each piece. They take, if you please, 160 rods through the tract, or a little more, leaving a piece on each side. The actual loss the owner sustains is first the value of the land taken; second, the damage done to the remaining portion of the estate. Now, the gentleman from Douglas says he would give to the land owner the actual value of the land taken without deducting anything for benefits, but when he comes to consider the damage done to the remainder he would deduct the benefits and apply them against damage to the remainder. Is that honest? According to my rule of right that is no better than legal highway robbery. If a man builds a mill and makes a market for my wheat, he benefits me. Suppose the dam he constructs overflows, and damages my property, whoever heard of deducting the benefits I derive from the erection of the mill against the damages I sustain from the overflow! And yet it is to be done in behalf of a corporation and not in the behalf of an individual. And, on the same proposition of law, we regard the mill as we do the railroad; and it is not upon any well grounded principle of exact justice as between man and man, that this amendment is sought to be obtained, and it was to avoid this construction which courts have been compelled to put upon the article in the Ohio Constitution that this word "damage" was inserted. I might stand here and illustrate the practical workings of this thing, if you strike out the word "damage," still further. But enough, it seems to me, has been said to recommend this to the sense and justice of the Convention. Why, if a railroad damages your property without taking an inch of it, and it may do it, ought it not to pay the damage just as much as if it took that property? And yet in one case you deduct the benefits, and in another you do not. Let us hear in what book the gentleman learned his doctrine that in the one case the compensation should be made, and not in the other. It certainly was not by any rule which commends itself to my judgment. And it was I conceive a matter which troubled the committee somewhat to frame this article, so as to cover the one case and the other alike. We did frame it so that the legal gentlemen on that committee saw that it covered both branches of the case. We put it in there because we meant it should be there. It was no accident. It was pure design, and designed to meet equal and exact justice between the citizen, the indiidual property holder, the State, the corporation and the counties; and we left them standing side by side. And the same rule applied to the one and the other. One other illustration: Suppose I am living on the border, and, by the exigency of the times, the Indians make a raid upon me, and the colonel is compelled to seize my property to protect me; and my horses are taken, and also my plow, with the furrow left unturned, would you expect me to ask damages for the protection I secured? If you would not apply this just rule to the State, or your property, why do it in the other case? But, gentlemen of the Convention, I do not deem it necessary to go further. Much more might be said, but I think the committee fully understand; and I think it must commend itself to their judgment, and indeed has.

Mr. LAKE. Mr. Chairman, I have a word or two to say on this question. I understand the proposition is to strike out the word "damage."

Mr. CHAIRMAN. There is no such proposition offered.

Mr. MANDERSON. I merely wish to direct the attention of the Committee in this channel. At the proper time I propose, not to strike out the word "damage," but to add to the section this idea—that from property merely damaged, not taken we direct that special benefits might be deducted.

The CHAIRMAN. The question is upon the adoption of the section, as reported by the Committee on the Bill of Rights.

Mr. MANDERSON. I propose to insert, where the Article reads "such compensation shall in every case," the words "Such compensation for property taken shall, in every case, be without deduction for benefits to any property of the owner."

Mr. LAKE. Mr. Chairman, I believe every member of this Committee is anxious to attain one end, and the same end in this Constitutional provision now under consideration—that the owner of the property taken by rail road corporations, or otherwise, shall receive just compensation for his property, and that he shall be made good for all damages he shall sustain by reason of his property being taken for this quasi public use. It will hardly do to say that property taken for a railroad track is taken for private uses. It is true that railroad companies are private individuals organized together for the purpose of securing sufficient capital to carry out their projects and enabling them to do what private individuals cannot do. Now how is it that the Legislature can acquire the right to take the property of private individuals for the purpose of constructing, or enabling others to construct railroads across the country; how is it that the Legislature can say that a corporation may take the property of A, B and C for the purpose of constructing a rail road track—how is it that the State can exercise this right of eminent domain in favor of corporations? It is by reason of the quasi public character of these roads? The state, or the United States may take the land belonging to the people for the purpose of constructing a military road. The State can take private property for the purpose of building roads from village to village, from town to town, and from city to city, and it is by virtue of the same principle that railroads are constructed throughout the country; but for this quasi public character, railroads would have no right to take the property of private citizens to construct railroads. We all agree that it is a great public benefit to any state to have roads constructed within its borders, but in this case the same rule should obtain to-wit: a full compensation should be given for all land taken or damaged by reason thereof. I don't believe any member of this Convention desires to subject a railroad corporation, simply because it has means, to any unnecessary burdens. It would be unjust to do so. It would be unjust for the state, or individuals to insist upon what is unfair against railroad corporations. I would throw no unnecessary impediment in the way of any enterprise they undertake, I would not say they should pay A, B or C more than for damages actually sustained. I would give just and full compensation for damages sustained thereby, and nothing more. Now what are these damages? The gentleman from Otoe (Mr. Mason) has stated them to be, first: the value of the land taken. Upon that there will be no dispute—the value of the land, that is the land taken in the first instance. Second: the damages to the land adjoining which was not taken, but yet the corporation is to be allowed nothing as an offset although through its having taken this land, it may have increased the value of the portion not taken, very much. Is that just? Why it seems to me that the rule which has been adopted in this State under our present Constitution, is a wise and just one, to-wit: that in addition to the value of the land taken you must estimate how much less valuable is the remaining portion of the land, of course not taking into account those general benefits which accrue to the whole community, but considering and giving credit for, any special benefits which the owner of the land may have received. I would not have the railroad company benefited by reason of any benefits which may accrue to the entire community. I would not have deducted from the value of the land remaining, such benefits. I have found, in practice that in 99 cases out of 100, the value of the land taken together with the damages sustained to the land remaining, are the only questions to be considered. So that it may be laid down as a general rule that the damage to be considered, is this; in addition to the value of the land actually taken, you estimate how much less the remaining portion of the land is worth. Now if a rail road should be run diagonally through a man's farm, it would be first the 100 feet strip through the land; next the value of the land remaining, not taking into consideration those general benefits which accrue to all. Would not that be just and right? Should not the rule be just, and bear on all alike? I think it should and therefore I am inclined to favor the proposition of my colleague (Mr. Manderson). I think it is an improvement upon the old Section, but for myself, I would be in favor of taking Sec. 13 of the Illinois constitution. It attains all that is necessary to be attained by this section of our constitution. I am willing to go further and include what is desired by the gentleman from Otoe, (Mr. Mason) that in this class of cases, money shall first be deposited for the benefit of the owner of the land damaged or taken. When a man is damaged, for instance, by building public roads by reason of excavations or otherwise, when the land is not taken, it would be but just as between man and man, between the State and the individual and between the corporation and the individual that if [there were] any special benefits, not applicable to the community, it would be but just and right that these special benefits should be taken into consideration by the jury, in estimating the damages, if as I said before, the second part of the damages is taken into consideration—the loss on the remaining portion of the land.

The gentleman from Otoe (Mr. Mason) has referred to a case of trespass that I say is not in the question at all. Who ever heard of an individual trespasser profiting by his own wrong, or being permitted to claim benefits? Can railroad corporations be compared to trespassers when they go on a man's land under the special sanction of the law? Is it just to compare them so? I think not.

If a corporate body see fit in the opening of a road to go through a man's farm; or if, in the opening of a street of a city it is necessary to take a portion of a private individual's property, for the public use, how is it possible to take into account the damages in any other way than by deducting from the damages the special benefits? That is the rule laid down under our present Constitution and the one under which the gentleman from Otoe (Mr. Mason) in his official capacity is expected to act. I am willing that so far as relates to the taking of the property the rule shall be applied that is contained in the provision under consideration and that the damages cannot be offset by the benefits to the land. In that I believe we all agree, but the kernel, the substance of the difference between the gentleman and myself is this, that where the rule only relates to damages, the benefits not felt by the community, but by the individual alone, may be taken into account by the jury in estimating the damages he sustains. It seems to me no gentleman can look at this question and take any other ground than that he is to allow justice to both sides, the party damaged and the party benefiting, you cannot reach a just conclusion or estimate by looking at only one side.

All should enjoy the general benefits which accrue from the building of a railroad, such as the rise in land, every one is entitled to in an undiminished and untarnished form. It is his inalienable right which he ought not to be deprived of, but when this one individual who claims damages is found to have received some peculiar advantage which the community has not received, such as the drainage of a swamp or otherwise useless morass, why should not these peculiar benefits be taken into account? I am anxious to arrive at what is just and right in respect to this provision proposed to be engrafted into our Constitution, and if I could be satisfied that the proposition was just, I would support it, but I believe that the amendment as proposed by my colleague (Mr.

Manderson) is just and as it should be, and I shall support it.

Mr. MANDERSON. Mr. Chairman, I wish to acknowledge the valuable aid received by myself in the advocacy of this proposed amendment by my colleague (Mr. Lake); he has relieved me from much difficulty and I merely rise to reply to one or two propositions by the gentleman from Otoe (Mr. Mason) whom I conceive has strangely misconceived, or who is disposed to misrepresent the remarks I made in introducing this amendment. To a certain extent I would place railroad corporations above the private individual. The law does so. To no individual does any State give the right of eminent domain, as it does to railroad corporations. But when it comes to mere rights, I would not for an instant place the railroad corporation above the individual. Let us suppose a case. A comes to B, and says to him, "I propose to take one half of your property," say he has two hundred feet. He says he will place, on the one hundred feet he takes, that which will make it of immense value. The whole property is now worth one thousand dollars and the half that B shall keep A promises to make worth $10,000, by putting up a hotel for instance, so that you can use it for purposes that you can never use it for as it is. Now what will A say to him? He says "Sir, I will give you the property if you will do as you propose." Now it seems to me that is rather the position of the railroad company that takes the land and the individual who purchases it. As my colleague from Douglas (Mr. Lake) suggests, I do not propose that against the land taken there should be any deduction for benefits, but against the damage to that that is left, there should be deductions for special benefits. In what school of honesty, says the gentleman, have I learned this thing. The school in which I learned this thing, is the school of Redfield, of Cooley, whom the gentleman yesterday eulogised, the school which is presided over by these great intellects that have given us their views upon the common law. It is a view of the common law that is against these damages, direct and special benefits should be set off. I have here that that expresses it seems to me, in words as concise and plain as they can be expressed, the ideas suggested by the friends of this amendment. I read from the Chicago Tribune of June 17th, a leading editorial that in all its spirit is directed, as are many editorials of this paper against the railroad interest, and it gives in clear, concise language what is the law.

"It is certainly very unjust that, if two farms lie adjoining, and one only of them is bisected by a railroad, while another merely fronts on it but has none of its land taken, the farmer losing his land shall be told that his benefit offsets his damage, while his neighbor, who keeps his whole land, sustains equal benefit and no damage. Therefore it is that the rule of law which should be enforced in all such cases is, that no benefits shall be offset to the damage except that which is peculiar to the person whose land is taken, and not common to all adjacent proprietors. The peculiar, personal, and exceptional benefits sustained only by the owner of the land taken may be offset, but not the benefits accruing to him equally with the owners of land not taken, such as the nearness of depot, and the general advantages of having a road run within convenient distance for travel and transportation. These benefits being such as the whole community share, and have the right to share, by virtue of the building of the road, cannot be charged as an offset in payment to any owner for land taken. Any lawyer, by referring to Cooley's Constitutional Limitations, or Redfield on Railways, will see the soundness of this position. This being so it could only have been by a neglect to properly defend their rights in the courts that the practice could have grown up of "taking a man's property and telling him the taking is compensation."

Let me say to the gentlemen, this grew up in the courts of the City of Chicago, under that very constitution of 1870, he reads from, the constitution of Illinois which says, "private property shall not be taken for public uses without just compensation." They have sought in the courts of that State to deduct the benefits not only from damage, but compensation for land taken. They have raised this question there, and able attorneys have maintained the position in the lower courts of that State.

"In all cases the Commissioners appointed to condemn lands for railways should specify the increase of value given to the remaining land by virtue of the road running through it, over what it would have been had the road run through land of other owners, not over what it would be if no road ever were built. And, under a right construction of this rule, which might well be reinforced by a legislative interpretation, no injustice could be done even in particular cases. The rule should be that the general advantages accruing to all land-owners near the route, and equally to those whose land the road does not run as to those whose land is taken, cannot be offset. Any other peculiar, personal, and special benefit which one land owner receives, by virtue of his own land being taken, and would not receive if his neighbor's land were taken instead, ought to be charged to him as special benefit, and he could not complain. Let the Legislature enact more plainly the rule of the common law, and all will be well, even in the obnoxious case of railroads.

Now Mr. Chairman, it seems to me that the last body of men who should be charged as being held under the whip of aggregated capital is the body of men who sat in Convention in 1850 and adopted the Constitution that has in it the clause that is to the gentleman objectionable. That Convention certainly was actuated by no desire to advance the interests of railroad corporations, they were rather enemies than friends, and in their zeal to protect private interests, to cripple railroad corporations I think they went too far. Looking through this Constitution they adopted we find all through it the evidences of this fact. They prohibited the giving of municipal aid to corporations, and as the result of that action, we are told, and I believe truthfully, that since the adoption of that Constitution, now twenty years ago, but one short railroad has been projected and constructed within the limits of the State of Ohio, because of their stringent rules against private corporations. The city of Cincinnati stands to-day upon her beautiful hills asleep and snoring, while other cities are passing her in the race for municipal wealth. Her great need is a railroad to the south east, she cannot aid it because of the Constitutional objections. Therefore I say it comes with bad grace from the gentleman to charge such a Convention as this with a desire to legislate for any railroad interests. I think too, it comes with bad grace from the gentleman to charge this as a dishonest amendment. I do not propose to impugn the motives of any gentleman on this floor. I certainly am not here wedded to any railroad interest. I do not own a dollar of interest, nor a bond of any railroad. I do not think that any one member of this Convention, no matter how large he may be physically, should claim to contain within his frame all the honesty that may be here. Now let us take one other case suggested by the gentleman from Otoe. He says, suppose A owns a farm, from one corner to another diagonally runs a railroad, what does the gentleman from Douglas propose? First he says, a compensation without deduction for benefits shall be paid for the strip of land taken. Correct, that is our position. But he says, he next proposes that for the damage done by obstructing this piece of land, no benefits shall be deducted, the land is ruined for farming purposes, and the gentleman would pay no damages. I would pay damages, but the question of ruin or helping is a question for a jury, to be determined by a legal tribunal, as any other issue that may arise. Let us run out this question. Here is a piece of land cut diagonally from corner to corner, perhaps one side of it is appropriated by the railroad and there is left to the farmer simply this triangular strip, it is so small that it is rendered utterly and entirely worthless for farming purposes. What does the gentleman propose? That we should pay not only for that we have taken for a right of way, not only for the triangular piece we have taken but for what is left. I say we should pay for it if we have ruined it for all purposes. We may have condemned it for farming but rendered it valuable for town lots. We may have given it some peculiar advantage. Suppose a railroad taking this strip on one side of its track erect works in which they may manufacture machinery, they may aggregate capital there, and toiling millions may by the sweat of their brow make those ponderous machines that run in the interest of aggregated capital. Toiling millions might sweat for many generations in their work, and unless aggregated capital would lend its helping hand, they never would construct the ponderous machines; but the railroad company places there its valuable shops. This land that was perhaps worth ten dollars per acre before this triangular strip was left may be worth a thousand dollars an acre. Had he that strip taken by the railroad company he would have been glad to have given them the land. We do not propose to place the private corporation below A, and say that while it is true we have been willing to give the land to A, he shall not give it to you as against the land taken. You must not deduct benefits he has received against that left that you have ruined for farming purposes, but make as valuable as though you could grow upon your fields greenbacks instead of wheat. For that damage you shall deduct benefit. As I suggest, and as is suggested by this article, it is not proposed by this amendment, the general benefits shall be set off against the damage to the land left but merely special benefit, not even, perhaps the location of a depot. It seems to me, Mr. Chairman, much more might be said in favor of this proposed amendment. It is not one raised in all necessity, one that does justice to the citizen and private corporations, and therefore I hope it will be the sense of the Committee it should be adopted.

Mr. PHILPOTT. Mr. Chairman, I shall have but little to say on this subject. I see some things that should be brought to the attention of this Committee. I do not believe as has already been intimated, that railroad corporations are the representative to some extent of a sovereignty, that they possess that great public character which has been ascribed to them and that thereby they attained eminent domain.

I do not like to hear it in a Republican country like ours. I take the right under which the railroad takes by the law of necessity, by which any property any where in a Republican form of government can be taken. Suppose A has a farm that is surrounded by B, C, D, and E. They say to him, "This is our land, you cannot go to your land over ours." What is he to do? Why, that law of necessity, which says that property, wherever it lies, should be for the benefit of the whole community, comes in and demands that he shall have right of way to his own land over any other that may surround him. Now, how is it in respect to taking right of way from one county to another. Where does the law of necessity come in? It is absolutely necessary the road be made from one county to another, that the business may be carried on; hence, by the law of necessity, it is right the State should make laws that will give them the right of way to any part of the State. Now where does this question of quasi public come in? There is no doubt railroads are lawful, and cannot exist without extension, and they must have the right to take property in order that they may be extended from one point to another. We can never take the property of any individual only by permission of the government and the State, and that is the only law I am willing to recognize. Suppose a number of men organize themselves into a company for the manufacture of shoes. They certainly would render the public a good by so doing, if they supplied the articles cheaper. But because they do good it does not make them a public institution, and so with railroads. What do railroads do? They may be organized in the eastern portion of the country and extend to the western portion; and when they come here they may charge perhaps three or four times more for way freight through your State than for through freight. Now these great public benefits are nothing more than bleeding the people. Generally they are private corporations in every sense of the word. They receive who they please and what freights they please. My object is to show that these corporations are private in their character, and I want them considered in this light. Let one of these private corporations pass over some individual's land, and suppose there is something which might be a pecuniary or special benefit to the individual. I want to know whether you will compel that individual to take advantage of that special benefit. How do you know it is a special advantage? I would like the gentlemen who have been discussing in favor of this amendment to show up those peculiar advantages, and show in what manner those advantages can be made profitable to the man. I certainly would be in favor of the section as reported by the Committee.

Mr. MANDERSON. Will the gentleman from Lancaster permit me to ask him, would not that question of damages, and benefits to be offset against damages be a question to be passed upon by a jury?

Mr. PHILPOTT. I have no doubt it would be a question for a jury, but I want it never to become a question for a jury to determine, there is no reason why we should put this matter in such a condition that it should ever go to a jury. If they open up that land it is for the man to take advantage or not as he pleases. How can you compel him to take advantage? And why would you allow, in this particular instance, to a private corporation, who are entirely for themselves? I cannot see any philosophy or reason why a party should be put in that condition before a jury that he shall go and show whether he is able to take advantage or whether he will or will not take advantage. I want the man to receive for the amount of [the] tract taken and for damage, but if he gains any special advantage let him embrace it: it is his good luck.

The gentleman from Douglas (Mr. Manderson) has referred to a speech lately made in this town by an eminent gentleman from Ohio, in which he said that but one railroad has been projected in that state during the last twenty years. Now what is the reason of that? The reason gentlemen cannot be credited to this provision in the Ohio Constitution which prohibits railroad corporations from being allowed to put in, as an offset to damages private individuals sustained by reason of railroads, general benefits which are conferred upon the whole country by railroads.

Mr. TOWLE. Mr. Chairman. Although I am very favorable to railroad corporations, and although I believe them to be of a quasi public character; but I believe, further, that they have become very popular and consequently very powerful, and it is for Constitutional Conventions—it is for the people of the different States to see to it that railroad corporations are placed in proper bonds. It is the duty of the Legislatures to place about them such limitations that they cannot drive over the private interests wherever and whenever they see fit. I believe the wisdom and experience of the last thirty five years has demonstrated the necessity that there be damages given, not only for property taken, but for property damaged also. Now where can a claim for damages be made? It can be made where private property is partially, or wholly taken by the public officers, or corporations—where property is either used or injured. For instance take it as it was in a certain place in Kansas a few years ago. A railroad was projected and partially built. There was some question as to the location, at a particular point and two lines were constructed, for a short distance, running at right angles with each other. Then another line was run which formed the hypothenuse to this right angle. Large excavations were left and the parties owning the property brought suit for damages and the case has been dragging along in the courts, for years. If proper Constitutional provision had been made to regulate cases of this kind a great deal of expense could have been saved. But the special question here, is the question as to whether we will allow a deduction on damages for special advantages that may be conferred by a railroad corporation, or any other kind of a corporation that may choose to occupy your land or take your building. Why, sir, if a railroad company can say that by going through my land, they are conferring special advantages on me, and that these special advantages are to be considered as an offset, where would be the end of it? Why it would only be following out that proposition to say that any corporation might go out upon a farm and set out stakes and begin work upon a hotel, for instance, and claim that as they propose to raise the price of the land adjoining, that this should be taken into consideration as an offset to damages.

Mr. MAXWELL. Mr. Chairman. I have no hostility to railroad corporations: on the contrary, I desire to encourage them in every possible way. I would place no obstructions whatever in their way, for I wish to see railroads built up throughout our State. I think the views of the gentleman from Douglas, (Mr. Lake) in regard to the rights of corporations, are, in the main, correct. From the necessity of the case, these corporations take private property from the owner without his consent, and use it. Now the question is, is this company to pay all the damages sustained? Now it is said by all, that they should pay for the land taken; but it is a question as to whether they should be permitted to assess any special benefits that have resulted to the owner. I think there will not be one case in a thousand, where any special benefits would accrue. I would say that where the chances are so few that special benefits accrue, that the party whose land is taken shall, in all cases, have full pay for all damages sustained. Now under our present law, it is provided that a jury shall go and make an estimate of the damages. The men composing this jury know nothing about land, [law] generally. They reason in this way; they say, "here this land is worth so much to-day; before the railroad run through, it was worth so much." So that they do actually take into account the general benefits which have resulted to the entire community by reason of this road being built. The Constitution should clearly state that these corporations should be required to pay all damages actually sustained. It is true that in most of the States these general benefits are put in as an offset to damages, because, in estimating damages, it is the rule to take into account the value of the land before the railroad ran through, and then consider the value of the land after.

Now that takes into account general benefits, that is, such as are shared in by the whole community, by men whose lands are not touched by these roads as well as those that are. If this is left to the Legislature their laws may be changed at any time and they might lay down another and different measure of damages than is now adopted, and is it not best to lay down as a fundamental principle in the Constitution that the general benefits shall not be considered against the measure of damages? Now, only for the color of law that allows railroads to go upon our land what are they but public trespassers, and this being the case I say that they should pay for all the damages that we sustain by their trespass.

Mr. MYERS. Mr. Chairman, where there is such a wide and marked difference in the minds of legal gentlemen on points of law, it is hard for others outside of the bar to come to a conclusion upon the difficulty. Now, sir, I do not propose to speak from a legal point of view, but simply as a farmer in regard to railroad improvements. If I understand the amendment of my colleague (Mr. Manderson) it does not apply only to railroads but to municipal corporations and others. Now I have followed it as a principle in my mode of action that wherever there are reciprocal benefits that they ought to be taken into account in the measure of damages. I am always in favor of fair play. I have ever failed to recognize any difference between a man and a corporation in this matter. It is true as the gentleman from Otoe (Mr. Mason) said that a corporation has no eyes to see and no ears to hear, and I would [add] often no heart to feel.

The provisions in the Constitution of the State of Pennsylvania are very plain and simple and even that great State has always progressed in her improvements without inflicting serious damages upon private property. The late governor of Ohio delivered a speech here a few days ago from that wood pile there, that belongs to the State I believe, in which he said that on account of railroad restrictions in the Constitution of that State but one railroad had been projected and built for the last twenty years, and the city of Cincinnati sits idle to-day for want of railroad connections, her great hog trade crippled for want of transportation. The provision in the Pennsylvania Constitution is:

> The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken.

That is the Constitutional provision of the Key Stone State, and under it that great State has built thousands and thousands of miles of railroads through difficult places and paid for all the damages. Now, sir why should we restrict or embarass the construction of railroads in this State? If I have a horse in my stable and attempt to feed him, but tie him up so short that he cannot eat, would I not be starving the horse just as much as if I would not give him anything? And if we say to these railroads "go on and improve our State," and yet restrict them by legislative enactment by saying you shall not go through here without first paying for all the damages you may do without deducting any benefits, so as to make it unprofitable to build any roads, do we not cripple our own interests? Who are the owners of the railroads? No King, no titled monarch, but we the people, and why should we prepare a halter for ourselves? I am in favor of the amendment of my friend from Douglas (Mr. Manderson), that we may leave at least one way open for the advance of these great improvements.

Mr. HASCALL. Mr. Chairman. I move that the Committee rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. GRIGGS. Mr. President. The Committee of the Whole having had under consideration the article entitled Bill of Rights beg leave to report progress and ask leave to sit again.

Mr. McCANN. I move that when this Convention adjourn to-morrow it adjourn at eleven o'clock to meet Monday afternoon at two o'clock.

The Convention divided and the motion was agreed to.

Leave of Absence.

Mr. MASON. Mr. President. I desire leave of absence to-morrow.

Leave was granted NEM. CON.

Mr. HASCALL. I ask leave of absence for myself and Mr. Myers until Monday afternoon.

Leave was granted NEM. CON.

Adjournment.

Mr. BALLARD. I move we adjourn.

The motion was agreed to, so the Convention (at twelve o'clock and two minutes) adjourned.

Afternoon Session.

Convention met at two o'clock, and was called to order by the president.

Mr. WAKELEY. Mr. President, I move that the Convention go into Committee of the Whole on the Bill of Rights.

The motion was agreed to.

Committee of the Whole.

The Convention went into Committee of the Whole with Mr. Griggs in the chair.

Bill of Rights.

The CHAIRMAN. Gentlemen of the Committee the question is upon the amendment offered by the gentleman from Douglas (Mr. Manderson) to insert after the word "compensation," "for property taken." Are you ready for the question?

Mr. WAKELEY. Mr. Chairman. The moving of this amendment has occasioned some discussion in respect to the principles which control the compensations to be allowed for property taken or damaged for public use. It is an important question. It is a question merely of what is right and just, and ought to be discussed temperately, and not in the spirit of advocacy, or with any undue zeal, to carry the point either way. I have but few observations to make in reference to the merit of this amendment. In most of the Constitutions of the American States there is a simple provision that property shall not be taken for public use without just compensation. And under that mere general provision no very serious difficulties ever arose that I am aware of, or have become acquainted with in the course of legal investigation. But the provision has been modified in some of the later Constitutions, with the view of more effectually protecting the rights of the citizen whose property is taken for public use. In the Ohio Constitution there was added to the general provision "that property should not be taken until this compensation had been first made in money." That was a safeguard additional to what had been established in the Constitution of other States. In Illinois, by the recent Constitution, a further provision was made to obviate some doubts or difficulties which had arisen in the construction of that provision in the Bill of Rights in the old Constitution, to the effect that property not only should not be taken for public use without just compensation but it should not be damaged without just compensation. The section reported by the Committee on the Bill of Rights embodies both these provisions and safeguards. It is well to see what is the effect of the amendment offered by my colleague, General Manderson, and to discuss this question with reference to that. As I understand it, Mr. Chairman, the object of the amendment is simply this: there is a general provision in the section as it now stands that compensation for property taken or damaged shall be estimated without reference to any benefits to the property of the owner. My colleague proposes to amend the section so that benefits to the property shall be excluded from consideration only in case where the property is taken. And the effect of the amendment would be to leave the provision in the shape that when a jury is called upon to assess the damages occasioned to his property by the construction of a work of internal improvement, the benefits to the property, as well as the injuries to it shall be considered. It does not affect the provision that when property is taken and appropriated for public use, that full compensation, in money shall be made. It is intended for that class of cases where the property of the citizen is not taken, but where some of his property not taken is yet damaged by the construction of the railroad or the highway or the street. Now, sir, we all agree that if the property of the citizen be taken for public use it must be paid for in money. It cannot be paid for by any benefit which the other property of the citizen receives, you cannot take away his property and pay him for it by benefiting some other property. You must pay him for it in money. But, sir, when he comes into court and claims compensation for damage done to property which you have not taken how are you to arrive at the amount of damage? Are you to determine the damage by looking only to those particulars in which the property is rendered less valuable, and excluding from consideration all particulars in which it is rendered more valuable? Is that the way to arrive at just compensation for property taken? For instance, if I have two lots in the city, and a railroad corporation or the city, for some municipal purpose, takes one of my lots, they pay me its money value. If I have another lot adjoining it, and I claim that that lot is damaged by the construction of the railroad or any other work of public improvement, how is the jury to arrive at my damage? The property is not taken but I assert that it is damaged, and I ask compensation for it. I will suppose that a railroad is constructed in front of that lot, so that it requires me to fill up the lot to bring it to the grade of the railroad; or, I will suppose that an excavation is made in front of the lot, which will require me to excavate from the surface of my lot. This is an expense to me, and if that loss is to be considered my lot would be damaged. But I will suppose that this adjoining lot has been taken for depot purposes; and I will suppose that by their construction of the railroad and the location of the depot directly adjoining that lot, that notwithstanding it requires to be filled up to bring it to grade, or excavated to bring it down to grade, it is still worth more in the market since the construction of the railroad than it was before. Now, sir, have I been damaged or not? I deny that the building of that road or depot, has damaged that lot, but the jury that sits to estimate damages, are to entirely exclude the benefits which have resulted to my property. I say that this is not a just rule. I think that we ought to leave the Constitution in such form that the court would be compelled to instruct the jury to allow, as an offset to the damages I may have sustained, these great and peculiar benefits which have accrued to me, and by which the value of that portion of my property remaining, has been greatly enhanced in value. Gentlemen argue this question as if it were merely a question between citizens and the railroad corporations. This question is general. It controls all corporations by which private property is taken for public use —railroad corporations, municipal corporations, public parks, streets etc. What is just in one case, is just in all. If this amendment is adopted, it leaves the rule as it always has been—where the court always favors the citizen, and gives him full compensation in money for all property the public takes, and gives him all damage he has sustained to the other property.

Mr. LAKE. Mr. Chairman, There are one or two remarks I desire to make before the vote upon this question is taken. The gentleman from Cass (Mr. Maxwell) seems to think, after all, that the doctrine contended for by my colleague (Mr. Manderson) is right; at least I so understand him in his remarks before the Committee. He says that the rule which has been laid down by the courts of this State is an equitable and just rule. In this I entirely agree with him—that the rule is just and right, and yet one thing that seems strange is, that the gentleman should contend that there should be inserted in the Constitution, a provision which would not secure the very rule which he deems just and right. This is the position which the gentleman takes; he deems the rule laid down by our courts, relating to cases between railroad corporations, town corporations, etc., and private individuals, is an equitable and just one, and thinks, also, that the amendment offered by my colleague will, by a Constitutional provision, continue that very rule which he would be satisfied with. Now I would say to the honorable gentleman from Cass, (Mr. Maxwell) that we propose to guard him and his interests against any damages he may sustain by having his property taken by railroad or any other corporations—we propose to secure to him that very rule, in the estimation of damages which he so heartily applauds here to-day.

I am very sorry that the gentleman will sustain a rule—will sustain a principle which is sought to be incorporated in the fundamental law of our State, and at the same time declare himself opposed to the very thing which proposes to fix these principles permanently. I have known the gentleman many years. I have been in Legislative councils with him. I have watched his course as a public man, for many years, with interest. I have had a high opinion of his abilities and sound judgment, and I am certain I never saw him take a position which is so untenable, and I do expect, before we get through with this provision, that he will place himself side by side with those who are contending for these valuable principles. We find the gentleman from Lancaster (Mr. Philpott) finding fault with the rule that has heretofore been used, but the principal burden of his argument, is this; he finds fault with the terms made use of and says that a term which has been used ever since the first settlement of this country, and not only here, but elsewhere, is wrong. He says that some gentlemen in arguing this principle, that in thus taking the property of individuals for these purposes; for highways, public parks, streets, railroads, etc., have declared that this was exercising the right of eminent domain, and here he disagrees with them. He thinks the right of eminent domain can be exercised only by the general government, or the State government. Now I find no fault with the views of the gentleman on this point; whether he calls it the exercise of the right of eminent domain, or the exercise of the right of necessity, or the exercise of any other power which gives the right to do these things. Now while they say the government may exercise this right in respect to roads, it cannot exercise it with respect to railroads. I say it has. If you find any distinction in our law books, you will find an exception. Let us see what an eminent jurist—one who is always on the alert for sustaining the rights of the people and against the encroachment of corporations—has to say upon this question. I refer to Judge Bartley, and I quote from the Fifth Vol. of the Ohio State Reports. I will say that I will place the wisdom of the Supreme Court of Ohio in juxtaposition with that of the gentleman from Lancaster (Mr Philpott).

"The right of eminent domain, to which the right of property is made incidentally subservient, is one of the highest attributes of sovereignty conferred upon the state. It was at one time contended with great force and plausibility, that this function of the civil power could only be exercised by the government, and that the exercise of it could not be delegated to individuals or private corporations, any more than the co-ordinate power of taxation, or power of enacting or repealing laws. Beekman v. the Saratoga & Cchenectady Railroad Company 3 Paige's Rep. 45. Although I am not disposed, at this day, to question the delegation of this power to private corporations (even although for the construction of works which are private property, and controlled and used as such) sustained upon the ground of a resulting benefit or advantage to the public; yet I insist, that if there be any matter of truth or value in the settled rules of judicial interpretation, the Constitutional grant of this power must be strictly construed; and that such exercise of it by private corporations, which always is upon occasion, not of public emergency, but simply of public convenience, should be well guarded against infringements of the rights of private property."

So you see that this right of eminent domain may be conferred upon individuals, or may be conferred upon corporations by the judicial authority of the State, and it is but right in the case of corporations that benefit the whole State as railroad corporations do, in building railroads which furnish means of ingress and egress to and from the State, and from one portion of the State to another—we say that the State, by reason of these resulting benefits, is justified in so doing—in granting to these great corporations, the right of eminent domain, and we think no one can question, successfully, the right of railroad corporations to exercise this privilege of taking the private property of individuals—under wholesome and proper restrictions—for the benefit of the entire State, and it matters not, whether the State exercise this right of eminent domain itself, or whether it delegates that power to a corporation which has for its object, not only private emolument, but as a necessary result, the benefit of the people of the entire State. It seems to me from anything that I have heard from the opposition, that there has been no reason offered against the rule laid down by the Supreme Court of our State, and why not, if it be just, continue that rule as a fundamental law. If the gentleman can lay down [one] that is better, or show where this bears one pennyweight's grain against the stern principles of equity, I will join them in the opposition to the principles sought to be laid down by my colleague. But if not, let us be satisfied with the rule which is admitted to be right. Then let us not quarrel over the mere use of terms. I wish to ask the gentleman from Lancaster (Mr. Philpott) what is the difference whether the land is taken as private, corporation, or in the name of eminent domain when the State requires it? The original section reaches out further and includes far more than railroad corporations. The argument seems to be that railroads only are included. Let us look at it and see. In the exercise of this right of eminent domain is contained towns, counties and other authorities, who may lay out a highway from one part of the State to another. The gentleman from Lancaster has said in no case are the damages charged to be offset by the benefits received. The gentleman certainly is mistaken. I have had some experience at the bar and on the the bench and if I recollect right the rule is different from the one laid down by the gentleman. He is entitled to damages to his land, and then if he has received special benefits by the location of the road those may be taken into account, and should be. The gentleman says that railroad corporations are entirely private and to support that he says that they may refuse to take goods as common carriers. I am sorry that the gentleman has to take such a position as that to support his arguments, for if he consults the law he will find that they are common carriers and have to take goods as such. All the railroads in our State are subject to the action of our Legislature so entirely that it may control their speed, rate of charge, etc. They are entitled to just such privileges as the Legislature sees fit to give them, and one of their rights is that of eminent domain, and just so long as they keep within the provisions of the law are they entitled to these rights. If no better reasons than what we have heard, can be urged against a rule that is so just why is it that we see this opposition? I hope the honorable gentlemen will so far forget their opposition to railroad corporations as to allow them to look with reason upon a rule that has received the sanction of the State. I trust this amendment will obtain.

Mr. PHILPOTT. Mr. Chairman, I first propose to reply to the gentleman last upon the floor. I did say that railroads cannot be made to carry passengers. The gentleman and others have ridiculed the idea, but what will you say when I still assert it? It is true that if they once become a common carrier by the receiving of goods or passengers then they are subject to the laws, but if they have with-held one portion of their road from the use of the public then there they are not common carriers. Now I don't object so much to those words eminent domain as to the manner in which it is attempted to be used here for a special purpose.

Railroad corporations when they take the private property of citizens are acting by virtue of authority conferred by the Legislature of the State. That Legislature, by virtue of the sovereignty of eminent domain, can delegate its property to private corporations, and they under the code of the eminent domain take the private property. I say the Legislature should not be clothed with that authority in order to take this private property. A railroad cannot exist unless it is allowed extension, and in obtaining that extension it may take private property of persons, but in so doing it is its duty to pay a just compensation. I willingly concede that after they have taken the land they should pay a just compensation for it; the next thing to be considered is how much is the land worth not taken and which has been damaged? They should also pay for that. So far we agree and where we disagree is in this. Gentlemen here desire to incorporate into the Constitution of this State such principles as that is, by virtue of taking the land for the benefit of corporations, they may offset that against the damages for the other land not taken. They come upon a man's land, take his property, and then say, "we have conferred upon you a favor and benefit, and the benefit we have given you, even contrary to your wishes, without your request, in counting up these damages we will offset that against the damage we have done you."

Mr. LAKE. Allow me to ask a question. Does not this principle you are contending for apply to the taking of land of individuals for highways, roads, streets, alleys, and so forth?

Mr. PHILPOTT. Yes sir, by virtue of the authority conferred on this railway corporation by the Legislature they take the land. If they take it by virtue of that authority I want them to treat the persons whose land they take in the same manner as the State, which takes the highways. Suppose the State lay out a road. It condemns the land it passes over. Where did you ever hear of an instance in which the State said, "Mr. A, in taking your land we have doubtless benefited you and now we want you to allow us to deduct from such money as you might claim from us so much for the benefit we have given you?" I am willing these corporations should go as far as the State and no farther. The State never claims they will offset that against any damage. If they claim their damages by virtue of this eminent domain, let them do as the State does, and not offset for some imaginary benefit they may have conferred upon the property of the party whose land they have taken.

Mr. ROBINSON. Mr. Chairman, For my part I made up my mind long ago as to what the true rule of compensation was and I have been listening very patiently for some argument to shake the conviction. I have heard none. I am of the opinion that if a railroad company takes private property, it should pay for that and the whole of it. I think if there is any one thing that distinguishes and characterizes the civilization of this age from that of any other age, it is individual independence. I do not desire to see that individual independence trampled upon. I do not desire that the gentleman from Otoe (Mr. Mason) should trespass upon my property without paying me for it, and I am furthermore unwilling that he should undertake to set off, against an injury which he has done me, a benefit, real or imaginary which he may have conferred upon me. I take it, Mr. Chairman, that every interference with the rights of an individual by another individual is in fact trespass. Now, sir, it strikes me it would be ridiculous if Mr. A, who has been alluded to several times, should desire to erect an hotel in this place, and should find it very convenient to his purpose to take my two lots to erect it upon. I say it would be rather a strange position to maintain. But sir, I can see no difference between the character of a railroad corporation and an hotel. I see no difference; in a certain measure they are both public or private. The hotel keeper cannot refuse to entertain his guests, nor the railroad refuse, if it be a common carrier, to transport passengers and freight. I care not what you call it, but sir, they are also private, they have certain rights extended to them and duties to perform. Now for every trespass a man commits he is bound to pay. He has no right to take my property and appropriate it without paying me fully for it. I ask gentlemen who argue on the other side: "What is it in the case of railroad corporations that a different rule should be adopted than in the case of private individuals?" Why did he take my land, is it because he is forced to, is it from some great public necessity, as is sometimes done in the State? Not at all! They take my property with all the consequences which the law maintains upon that taking, for their own benefit. I take it, that if any individual undertook to run such a road, that was not a corporation, he would have to pay, he would be bound to pay me in full. It strikes me if it pays these corporations to build these roads, they will build them. I deny the right of the legislature and, morally, of this convention to pass any rule which shall compel the private individual to allow his property to be subjected, for any compensation whatsoever, to these corporations. Every man has a right to enjoy his own, and notwithstanding the authority which my learned friend from Douglas (Mr. Lake) has read, I am inclined to think the only person, the only thing, to use a general term, that can exercise this right to eminent domain is the State. I have no doubt about it. I did not hear clearly what the learned gentleman read, but I am confident it cannot be found in any respectable book.

Mr. LAKE. I read from fifth Ohio State reports. Chief Justice Bartley of that State, considered very good authority.

Mr. ROBINSON. I care not, Mr. Chairman, the State must have this right. It is from a great necessity, without a provision specially looking to these corporations, without a mere provision that, the State should exercise this right of eminent domain, would confer upon the Legislature, the power to provide that corporations might appropriate private property to their uses. I care not where the authority is, it contradicts common sense. If we incorporate in this Constitution a provision that it may be exercised in such cases, it may, for the power established is superior to any other power.

Mr. LAKE. If the State cannot confer the right upon the corporators, how in the world would you obtain the right of way against the consent of the owner of the soil.

Mr. ROBINSON. I think it could not be gained by virtue of any statutory provision, a public way I care not could be given—

Mr. LAKE. I am speaking of railroads.

Mr. ROBINSON. Well, sir, I look at it in this way. If the Constitution under which that Legislature acts, confers a power broad enough, I grant he can take away the rights of half the individuals of this state. But, sir, without a provision in the Constitution, conferring upon the Legislature the right to delegate this power to a corporation, I assert it cannot be done. And the point I make is this: that if we engraft into our Constitution simply the provision that the State shall have and exercise the right of eminent domain, it confers upon the Legislature no power to grant this right to a private corporation. I say this provision must be special. It does not reside in the right of eminent domain. This right can only be exercised for State purposes.

Mr. WAKELEY. May I ask the gentleman from Lancaster a question?

Mr. ROBINSON. Certainly.

Mr. WAKELEY. Is there a State in the Union which has ever conferred that power in the Constitution, and if so what?

Mr. ROBINSON. I do not know of any which has.

Mr. LAKE. One other question. Does not all legislative power and authority reside in the people of the State entirely which is not delegated or taken from them by the Constitution, and cannot they exercise that right of eminent domain through their Legislature without express provision in the Constitution authorizing them to do so?

Mr. ROBINSON. I will answer the question of Judge Wakeley first. I said I knew of none. But I do know that in our own State, and in every other State, perhaps, there is a provision which provides that private property shall not be taken for these uses without just compensation, leaving it plainly to be seen that the Legislature has in certain cases, the power to take this private property. Now I will answer the gentleman from Douglas (Mr. Lake). I take it, sir, that the Legislature has no right to interfere with private rights except where that power is expressly conferred—no right without some provision which, either by necessary implication or special right, confers upon them the power to take away my individual rights, and it cannot confer such right upon a private corporation without it is expressed in this Constitution. Wherein are these public organizations? Are they public like a county? Is it for a benefit of the whole people? Not at all. These are private corporations, which carry their own capital and work for their own good. Where do I get the benefit except I pay them for it, and pay them pretty high, too? The rule as I understand it, and which has been referred to as just and applicable in this State is this—and I wish to state that it is a great stride above the rule in some States—if a company runs over a quarter section it shall pay the owner for the ten acres if it runs across, so that it injures that which remains of my farm, they have this right at least so says our Supreme Court, to set off in mitigation of the damages, the benefits which have accrued.

Mr. LAKE. That is not the rule. The rule is that there may be an offset in special damages to the individual, and the rest of the community do not share it alike with him.

Mr. ROBINSON. I do not understand the rule so. I understand that they must pay for the land actually taken, and if other damages arise then they may set off any special benefit. It must be a benefit conferred upon him which may not be conferred upon the whole of the community, and the benefit to the community is that it raises the value of the land in the vicinity.

Mr. MANDERSON. Will the gentleman permit me to trespass a question? Will you name the Convention a single State in the United States where, by the terms of its Constitution, or by the decisions of its courts, a contrary rule has obtained to that which is sought to be obtained by this proposed amendment?

Mr. ROBINSON. I do not think, Mr. Chairman that I could cite now, but, I will promise the gentleman a bottle of wine and a box of cigars if I do not produce them in a certain time. I think, Mr. Chairman, these railroads are a good thing; an excellent thing. I think they have changed the affairs of things in this country, and are destined yet to change them. But it strikes me they flourish where other things fail. Their power is to become enormous. They have become tyrannical in various ways, and trampled on the rights of individuals. I wish, to preserve, both for myself and fellow creatures, the right to assert my rights against any body as long as I live. I do not believe in conferring upon any corporation or body of men exclusive rights. I believe the good which they do is, in a great measure, offset by the evil they do. I would rather curtail them. If it can be shown that they are a part of the State organization, or bear in any degree, a governmental stamp, I am willing then that some more rights should be conceded to them. Mr. Chairman, I am not fond of personal allusions; Judge Mason is right in his proposition, when one member attempts to impugn the motives of another, I think it is time that the gentleman should be called to order. When he talks about our putting ourselves upon record, as though we were to be intimidated by this, he is mistaken Every individual in this house has sufficient moral courage to place himself upon the record as having followed the promptings of his own judgment and good sense.

Mr. MAXWELL. Mr. Chairman, I certainly have no feeling of hostility against any member of this body, and while I will do every thing in my power to insure good feeling among the members of this Convention, yet I shall certainly endeavor to do my duty, and speak freely upon every question of importance which may arise.

Now it is contended, very strangely, that parties not interested in special benefits may get pay for their property. This afternoon, I stated to this committee that it was the custom to offset general benefits accruing, against the damages allowed the party whose property was taken; that the course in this State was to allow damages for the land taken and then assess the damages against the land remaining; taking into consideration the increased value of the land as an offset. Now when the gentleman from Douglas (Mr. Lake) says that in not more than one case in a hundred, are special benefits conferred, he tells the truth. It is sought to incorporate an article in our Constitution which will permit any benefits which may accrue, as an offset to damages. They say first pay for the land taken. Suppose you take a strip 100 feet wide across a man's farm, across a quarter section, running diagonally. The owner is to receive, simply, the pay for the actual value of the land taken. This is a very small part of the damages. You take, say, six or seven acres, and the land is worth $40 per acre. This would allow the owner $240, or $280 at the most. Has the owner been paid full damages? Suppose an embankment 20 feet high is left upon the farm; the owner has received $280, and he has been damaged $5,000; his farm is ruined. But there is a depot a short distance off, and they claim this is a special benefit, and the owner of the farm is compelled to pay for this imaginary benefit.

Mr. WAKELEY. Will the gentleman allow me to ask him a question?

Mr. MAXWELL. Certainly.

Mr. WAKELEY. Suppose that depot has made the rest of the land worth $5,000 more than it was before; how much is his land damaged?

Mr. MAXWELL. That is just where the rule of the courts has applied. They say, "this man's land has increased in value so much; it was worth twenty dollars per acre before the road was located, and it is worth forty dollars per acre now." But then, all the land around is worth forty dollars per acre, his neighbors have been benefited in this way just as much as he has, while their property has not been touched; must this man whose land has been taken, stand all this loss? The depot benefited the property for miles around,—it would be called a public benefit; so that this is nothing more than extending the principle of general benefit. I say we ought to insert a provision in our Constitution which will forever prevent general benefits being assessed against individuals. This would do away with a great deal of litigation now had. The Constitution would then say to a jury called to assess damages, "you are to assess this man's damages, without regard to benefits" the jury would then go on, and know just what to do.

My friend from Douglas (Mr. Lake) read the dissenting opinion of Judge Bartley. It is true that the Legislature does confer upon these corporations the right to take private property. In effect, this is the

Legislature reinvesting the public with the right of eminent domain. This right, as I understand it, exists only in the public, but the public confers it, if it can be conferred, upon these corporations. Now these corporations serve the public so far as this; they carry the public and they charge for it. They conduct their own business, make their own dividends, and are private corporations to all intents and purposes. Now I will read an extract from the same book from which Judge Lake read, page 149, 5th Ohio State Reports. I quote from Blackstone:

"So great, moreover, is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road for instance, were to be made through the grounds of a private person, it might, perhaps, be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain may it be urged that the good of the individual ought to yield to the good of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good and to decide whether it be expedient or not. Besides, the public good is in nothing more essentially interested than in the protection of every individual's private rights as modeled by the municipal law. In this and similar cases, the Legislature alone can, and indeed frequently does, interpose and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner, but by giving him a full indemnification for the injury sustained. The public is now considered as an individual, treating with an individual for an exchange; all that the legislature does is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power which the Legislature indulges with caution, and which nothing but the Legislature can perform."

Mr. STEVENSON. I believe it is an axiom acknowledged by Methodist class leaders that a person is always relieved by speaking. I do not want gentlemen to think that I am not in favor of railroad corporations, but, I believe that no corporation, whatever it may be, should have any advantage over the private individual. The gentlemen who sustain this question all argue that they are a public benefit, but that is no reason for giving them the right of way through my farm. As I have to pay for every thing I get from them it is nothing more than right that they should pay for what they get. I hold that it is not right nor just that a man should not have damages for his property when taken either for public or private use, and if Judge Lake should array all the authorities of the country before me to the contrary I would not believe it. Is there any principle of law or equity in it? I think not. I say it benefits the man who is a half a mile away from the road without running through his land or damaging it as much or more sometimes than the man whose property is taken, but the one who sustains the loss is to be subjected to deduction for benefits. That is not just.

It is a fact that these corporations are becoming very powerful, and their powerful influence is permeating all our Legislatures. Although Judge Lake says we are not here for the purpose of legislating, I must say we are here to draw up organic law for the government of legislators and we must guard well the interest of our constituents, and we must not give the corporation any better right or more than the man who erects a mill, or opens a stage line. If we are going to offset damages for one let us do it for all,. Why should we be so lenient with these great corporations? How many of those who hold the stock of them are residents of our State. Very few. I believe if there had never been given a bit of aid to the railroads they would have been built. They are not only looking at the present, for every dollar they expend to-day they will receive double to-morrow. Mr. Myers spoke a great deal about the great State of Pennsylvania. I care not for the precedents of any other state—we are here to make laws for the people of the State of Nebraska, and laws applicable in Pennsylvania might not be practicable in this State. You might as well say because the heathen mother casts her child into the Ganges to be destroyed by the crocodile, therefore we should do so. I hold it is jumping right out of the frying pan into the fire. It is our sworn duty to ourselves and our constituents to make the law so that they can get the pay for the damages done them and their property by these corporations. Judge Lake speaks a great deal about public highways, but I hold there is a great difference between them and railroads, I do not know of a case where the benefit of a public road was made to offset the damages done by the opening of that road. I hope this amendment will not prevail and I hope the members of this Convention will look well to the interests of our State and beware how they vote on this amendment.

[Judge Mason's speech on this subject—pp. 279-385 of Mss.—Sent to him for correction and not returned. Not found among Judge Mason's papers after his death.]

Mr. MANDERSON. Mr. Chairman. In my youthful days, when attending those traveling shows that pass through the country now and then, sometimes under the name of circuses and again under the name of menageries and which, when they adopt the latter name, are considered to be entertainments highly moral and instructive in their character, I have noticed that the moment of deepest interest and intensest enthusiasm, when the promiscuous audience gathers with the greatest emotion to gaze, open-mouthed and with hair on end, upon the scene, is when, the employes and keepers of the animals having by goads and sharp sticks introduced into the den of the caged lion, roused him fully the monarch of the forest paces to and fro in his confined limits, in fury lashes his tawny sides with his tail, shakes his shaggy mane, opens his throat and roars to the delight of the assembled and admiring crowd. And it is strange that but a moment ago this "dreamy reminiscence of my childhood days" should be presented so vividly and forcibly to my mind.

I would be content, Mr. Chairman, not to raise my voice again in advocacy of the proposed amendment, were it not for the peculiar character of the remarks of the gentleman from Otoe (Mr. Mason).

We have heard the deep bass of his trombone and his roar "full of sound and fury signifying nothing" in opposition to my amendment, and I cannot attempt, nor would I dare, to compete with him in any exhibition of the character he has given before this Convention. But being, as I claim, as honest and unbiased in my advocacy of this amendment as he can be of the original article, I do not propose to sit entirely silent. He has seen fit to criticise some of my argument in a manner it certainly does not deserve. He says he noticed a sneer upon my face when I made reference to the sons of toil; that I "held double quotation marks on each side of my mouth" when I used language of which I credited him as its author. True, there were quotation marks and perhaps a sneer. But that sneer was not intended for the sons of toil nor will they so appropriate it. The gentleman cannot exceed me in my regard and admiration for the laborer and toiler whose skilful hand or active brain blesses mankind by its creative power. I claim to be a "son of toil" and believe him to be one. We are all workers whether we labor with head or hand. The mind that conceives a great idea should receive as much grateful commendation as the laboring muscle that with executive force carries that idea to successful operation. The sneer, recognized by the gentleman, was rather directed to that class of individuals who from demagoguery, clap-trap and pure buncombe wish to array interests in antagonism that should go hand in hand, who attempt to array labor against capital and say to the "sons of toil" "these men who have gathered wealth are your natural enemies, up! and at them!" He who does this and urges this antagonism deserves and should receive not only the sneer but the rebuke, open and expressed, of every man who does not wish to see our beloved country drift into such terrible scenes, such as we have so lately read as occurring at the coal mines in the State of Pennsylvania, or to see this broad land a Paris under a reign of terror more terrible than that of the bloody days of the French revolution. Let the arch demagogue take to himself my sneer rather than attempt to throw it upon those for whom I have simply regard and praise.

There were several propositions made by the gentleman from Otoe (Mr. Mason) that I will attempt to reply to. First let me take up that most labored of his argument. He says suppose a railroad corporation taking its way through the land of a farmer sees fit to enter the private burial grounds, tears down and destroys the monuments he has erected to the memory of some loved and dear one. This is an extreme case and one that could hardly occur. I do not know whether there exists in our statutes that law which finds its place in the legislation of so many States, that no burial ground or cemetery can be taken by any railroad corporation for its use. Against any such hardship there can be and is full protection in the law. He says a man may have upon his farm a stone quarry buried under the earth. He does not propose to use this quarry, but keep it as an inheritance for his children. No railroad existing near him, there is but a local demand for the stone and it is of little worth. It has for him no present value and is of but prospective benefit. A railroad is established through his farm. The corporation pays him in full for any land taken and he says "you have ruined my farm for agricultural purposes, pay me its full value as incidental damages." The gentleman from Otoe says he should be thus paid. I say no. If there is actual present damage he should be paid, if he is not damaged he should receive nothing, save payment for the land taken. Suppose the establishment of the road gives him a direct incidental benefit, that the stone quarry before having no practical value has now been called into paying existence to enrich the owner. Poor in his possessions before he is now enriched and yet the gentleman would pay him for an imagined damage he has never sustained. But we are told the farmer did not want the benefit, that he wished to live in quiet retirement upon his farm and not use the stone quarry during his life, but keep it as an inheritance for his children and that his wishes in this regard should be permitted to stand in the way of the public needs. I say again no! He has not the right to stand in the road of progress and block up the path that benefits the public and himself. But then the gentleman says, we have no right to take from the private individual something that has to him peculiar value, for the use of a corporation. Let us look at this for an instant, and I advance the proposition that the privilege of taking private property, even that of peculiar value to the owner, is permitted by the law to private individuals and to the law, although it frequently works great hardship, we hear no objection made. Look at the working of the replevin law. My friend from Otoe may have at his home something which has to him great and peculiar value, but that as a marketable commodity is of no worth. It may be some precious article handed down in his family for generations from sire to son and if you were to weigh its value and place on the other side of the scale diamonds and gold, in his estimation the precious thing would out-weigh them all. Yet in open market if exposed for sale it would not bring five dollars. Does the law fully protect him in the holding of this property? No! If I see fit to make an affidavit in replevin that this property is mine, and that after demand he keeps me out of its possession and will give a bond in double its marketable or appraised value I can take from him this, to him, precious thing—valuable though it be to him and valueless perhaps to me. What is his remedy? It is found by the verdict of the jury which tries the right of property that it never was and is not mine. Yet I retain the property and if I am worth nothing the law leaves him to his suit for a money recovery upon the replevin bond and he recovers only the actual value of the article on the amount it would bring in the market. Thus it is a great hardship, it is true, yet the law frequently for the good of the greatest number works injustice in individual cases. There must be some sacrifice on the part of the person for the good of the whole.

Now a word Mr. Chairman on the question of prospective damages and benefits. Take the case of the man owning the stone quarry that he does not propose to use. It has to him no actual value but simply prospective. He may not want to have a railroad located near his home. Perhaps he says "I will be seriously damaged, the sparks from the locomotive may destroy my barn, or my house, or the trains may run over and destroy my stock." True, they may, they frequently do, but if the railroad is established and does him damage in this way he has his remedy at law when the act occurs and a jury passing on the questions raised under this section cannot take into account such prospective damage. The actual present damage is to be determined by the jury. It first asks "What is the land worth that is taken?" Suppose we say one thousand dollars then the railroad shall pay one thousand dollars. Next "how much less valuable is the land worth that is left to the owner." Suppose we say another thousand dollars. That is the actual not the prospective damage. Now what do we propose to offset against these actual damages, simply actual, direct and not prospective benefits—not benefits that may exist only in the future. Now, the gentleman from Otoe (Judge Mason) in one part of his argument takes a very strange position, and one that is inconsistent with the position he seeks to maintain. In contending against the adoption of this proposed amendment he says that the original section as it comes from the hands of his committee permits special and direct benefits to be deducted from claims for lands damaged. I differ from him in this construction, but by this admission his entire argument loses its force. Why this is all we claim or want. We do not wish to drag general benefits forward as an offset, we desire that only directly consequential benefits should be considered by the jury. If the original section permitted this with it we would be content. We wish merely to carry into our Constitution the rule that obtains in every state in the Union. Either in the Constitution or in the decisions of the highest court of each state you will find that which we desire here to be the practice and I will win the bet from the gentleman from Lancaster (Mr. Robinson.)

Another argument advanced by the aggregated wisdom of Otoe county was based upon the grant of a charter to a street railway. I never heard of a street railway to which was granted the right to take private property for its use or right-of-way. They are chartered institutions and what is the right given them by their franchise? To run their track along the public streets. Can they take a lot belonging to any private individual and locate a stable upon it? No, sir; they must buy it as any private person would purchase it. I never heard and do not believe that any gentleman on this floor ever heard of an instance where it was necessary to take one inch of private ground for Street Railway purposes.

This doctrine applies with equal force to municipal corporations, and let us now apply the rule to the opening of streets in towns and cities. Suppose I own a piece of land two hundred feet in depth. The town corporation in the exercise of its granted rights of eminent domain opens a street one hundred feet in width through the center of my lot. I have desired to use my lot for residence purposes simply, but the street is opened and I am left with a strip of land fifty feet in width on each side of the new highway, instead of the full lot I owned before. What should be the rule? The corporation should first pay me for the ground actually taken for the street. The gentleman from Otoe (Mr. Mason) says it should go further and in any event pay me at the same rate for that which is left me. He would have me say, "I wanted this for a residence lot, I cannot use these strips for residence purposes, these pieces left me are useless for the purpose I designed them, pay me therefore to the extent of the value of the whole lot." "But," says the city," we take but one half your lot and the two strips of fifty feet each left to you are worth four fold more than the entire lot was worth before the street was opened. These strips are now available for business purposes and you are enriched by the action of which you complain." I say it would be very unjust for me to claim payment in the manner indicated. There has been no damage, there should be no payment. There has been no wrong, there should be no remedy. There should be no recompense where there has been no loss.

A word only, Mr. Chairman, in conclusion. The rule we advocate has received the sanction of years. Gentlemen are unable to point out a single instance where in any Court a contrary doctrine has obtained and been enforced than that which we contend for here. I see no reason why we should depart from that safe path which has been travelled by constitutional lawyers and jurists so many years before us.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Douglas, (Mr. Manderson.)

The Committee divided and the amendment was not agreed to.

Mr. MANDERSON. Mr. Chairman, I will make this motion, that we insert before the word "benefits" the word "general."

Mr. MASON. Mr. Chairman. I have no objection to the amendment myself, but desire the committee to understand what I consider will be the effect, for it will leave the rule without precedent; that is to say, that you should first pay for the land taken, then finding the damages you may deduct peculiar benefits. But when I am called to vote I will have to vote against it.

Mr. ESTABROOK. Mr. Chairman, I will simply say to-night as it is late, I don't care whether this amendment is adopted or not, but before the section is adopted I hope that we may understand it better than we do now. If I understand the wording of the section, it is where property is not taken at all, but just damaged, no deduction can be had, you may keep the property in the one case and in the other you part with it. I take it that this section was put into the constitution of the state of Illinois without any reference to railroads. The Chief Justice (Mr. Mason) tells you that this has been the rule already, but this is additional and was made first. I believe in the constitution of Illinois and I think it was made to apply in Chicago, or where it was found necessary for the public good to destroy some buildings, as in the case of fire to keep it from spreading.

Mr. ESTABROOK. I cannot conceive that the committee has understood this thing, it seems to me the most ridiculous proposition in the world, to say in the estimation of damages done you shall be permitted to inquire whether there has been damages. If a corporation takes away our property, then we inquire what shall be the compensation. I have been trying to think of a case where the railroad corporation could fall within that provision, and I can think of only one case, it clearly is not where a man's farm is taken, you take his farm and award him a just compensation. The only case where I can imagine a railroad corporation comes within this law is where a man has a business house upon a street, a railroad comes along and takes the street so as to stop travel, but does not take his land, there are damages for shutting up his door. What if it should result that the improvements in the vicinity are such as to make his land worth more, you leave him in possession of his property and do him a benefit.

Mr. THOMAS. Mr. Chairman. It seems to me that there cannot be very much danger in the provision referred to here and in the amendment offered. I understand that the law would be, even if this amendment were not adopted, that no deductions should be made for general damages. I understand the rule of law formerly was that no compensation at all was given unless the property was taken. I find in Chap. 23, page 603 of "Sedgwick on the Measure of Damage" the following:

> It has been declared in New York, in relation to railroads running through cities, that the prohibition of the constitution is against taking private property, not against injuries to property, and that contingent future damages or incidental and consequential injuries of indefinite amount not capable of estimate, do not fall within the statute. So, when it is alleged that private property in the neighborhood of a railway will be injured by its vicinity, the claim is inadmissable. The same doctrine has also been applied to the grading of streets and highways, and it has been held that injury resulting from grading and leveling a street, either by cutting down or filling up so as to make the street either below or above the natural level of the adjacent land, is damnum absque injuria, for which no compensation can be had."

I understand that this provision in

the Illinois constitution concerning damages, is, "when taken or damaged for public use." This provision is understood to cover that very case, the matter of damage of property where the property is not taken. For instance, where a railroad is run directly in front of a man's dwelling in a city, the street in front of his house may be excavated, his property is damaged, but he is not touched This provision is to cover such cases It seems that would be eminently just. There should be a compensation for the damage sustained, not the value of the property because the property is not taken at all, that should be without deduction for general benefits, benefits shared by the owner of that property in common with the property around.

Mr. ESTABROOK. Say the lot is worth a thousand dollars, a railroad comes past and locates a depot there in front of him, cuts off his sidewalk, nevertheless the lot valued by an assessor is worth two thousand. How would that be?

Mr. THOMAS. If those general benefits, if all the lots around were worth as much more—

Mr. ESTABROOK. If you take that lot I admit then you only regard the general question, if you allow him to keep it, inasmuch as you have not damaged it, can you recover damages?

Mr. THOMAS. If there are any special benefits.

Mr. LAKE. Mr. Chairman. It seems to me that the insertion of this word "general" would make the Constitution in such a form, that it would be beyond the power of the Legislature to adopt any other rule than that which the courts of this state, and several other states have adopted. I have not a doubt but that would be the result, that it would enforce the same construction, the same rule and decision as has been adopted by the courts of this state as referred to by the gentleman from Otoe (Mr. Mason.)

The rule has been stated two or three times by the gentleman from Otoe, that it would be in case of the taking of property first, the value of the property actually taken, then the damage done to the remaining portions of the property not taken, deducting, if there are special benefits accruing to that individual not enjoyed by the others in the community, adding it to the value of the property taken, which would make up the amount of damages sustained.

Mr. STEVENSON. Mr. Chairman. I think the insertion of that word "general" would leave that amendment where it was before Mr. Manderson moved it. I cannot see that it would make an iota of difference. I cannot conceive any case where there would be benefit so special to a particular party and not to others concerned. I claim the committee who got this article up got it up so that it will be satisfactory to the whole people without an amendment, and I think that word "general" would accomplish the very end these men have been fighting for.

Mr. MASON. Mr. Chairman. I desire to say that if the word "general" is inserted the rule of damages will be fixed by the Constitution, and it will be as I have previously stated, and the Legislature cannot change it. I desire further to explain the reason of my earnest opposition to the amendment, so that if it had prevailed then the Legislature might under the lash of the whip, or spur of any of these corporations establish a rule by which general benefits could have been set off against the damage done to the remainder of the estate, and my own individual opinion is that the article is right without the word "general;" though I do not as I said before, deem it of that dangerous character that I did the first amendment. And I might say I desire to fully comprehend and understand the language that was used in the article which was re-committed to the committee, most of which was prepared by the gentleman from Douglas, Judge Wakeley. I think I do understand it; and the article fully commends itself to my judgment without amendment at all. And if the committee desire to adopt the rule which I contended for as just this afternoon this amendment should not prevail; and if they desire to fix the rule as laid down in Congress now—that is to say, to deduct special benefits, I think it ought to prevail. I have been at a loss to see what are special benefits. I am now and I would be if I were asked to state a case of special benefits conferred. It would trouble me much. I do not know that I can do better than to refer to the case I alluded to in Pennsylvania in the discussion this afternoon. It puts it beyond question that benefits, special or general, can be considered. If the provision should prevail without amendment, of course the Legislature might say that particular benefits might be deducted from the damage done to the remaining portion of the land not taken. I think the Legislature might say that, if the section were adopted as it reads, that particular and special benefits might be deducted. If the word "general" should be inserted then there would be nothing left with the Legislature or anybody else. It would be fixed in the Constitution and be the same as that now laid down by the district courts of this state. If the amendment prevail then the Legislature may state that particular benefits to that portion which is not taken but damaged, that those particular benefits may be offset against the damages done. Now, for my own part, I have no very serious objections to this rule, while as an individual I never deviate from what I regard as a right course of policy. Now I can see some reasons, founded in policy, why the word "general" should be inserted, but that my views of the rights of property, that is private property, are that it is so sacred that no benefits, either special or general, which accrue to the individual, when the property is taken against his will, should ever be set off against the value of the property taken, or against the damage, done to the remaining portion. I say I can see no reasons founded in policy why this should be done, but as a question of abstract right I might say it ought not to be done.

Mr. ESTABROOK. I have listened with a good deal of interest to the statement of the views of my friend who has just sat down; and I would like to ask him if it was in fact increased in value should there be any damage allowed

Mr. MASON. I refer the gentleman to a case published in the Law Review of the City of Boston, which occurred in the City of Boston, I cannot place the case, nor the number of the Review, in which the property owenr had a residence worth upward of $160,000 overlooking the bay, situated on a high hill, and the railroad company, in the construction of their road made an embankment, some hundred feet high, and cut off from the road the property which was destroyed and ruined, without touching it, and the court held there was no remedy in the law, and when I prepared this argument I had this case in view.

Mr. ESTABROOK. You say he was injured and ruined. Suppose it was increased in value?

Mr. MASON. Who shall say? It was taken against his will.

Mr. ESTABROOK. Not taken at all.

Mr. MASON. It was damaged, damaged against his will. He did not want it; he said, it was a nuisance.

Mr. ESTABROOK. I supposed a case where it was really ruined.

Mr. MASON. Now, I will put this case, while I answer the gentleman. I trust he will sit still and be content to work in the harness for a single moment. Now, sir, property is taken or not taken, damaged or not damaged by the construction of the road. If not damaged there is no question here. Now what does he say? He says the property was damaged, but he received the benefits and I propose to offset the benefits against the damages. I think the committee understand me fully, and I do not know from the vote which was taken, that it is absolutely necessary that the gentleman from Douglas should understand me. I see what the struggle is, and so does every gentleman in this convention. The struggle is to say that because the property owner derives incidental or general benefits, that those benefits shall be offset against the damage done to the balance of the estate. If the gentleman objects to the word "general" he and I agree. All I desire to say now, so that the committee might understand if they vote down the word "general" until the Legislature say the particular benefits may be offset against the damage done to the estate which is untaken—it cannot be so settled. But if the word "general" is put in this rule is fixed and the particular benefits will have to be set off in every instance. And if the word "general" is inserted it leaves the rule fixed in the Constitution the same as in the courts. If the word "general" is left out no particular benefits, in my opinion, can be set off against the damage done to the property which is not taken until the Legislature says it may be; and they may say it may be if this section shall [go into] the Constitution without amendment. I shall cast my vote against the insertion of the word "general."

Mr. THOMAS. What I am afraid of in this provision is that if the State should open a street the provision should apply. If a city opens a street and goes through certain lots what compensation should the owner of these lots receive? Ought it not to be the difference between the value of the lots, and what the value of the lots may have been. I admit that where the railroad has brought benefits the reason which has been urged here, may apply. Now the county opens up a road, and a certain piece of property, not touched may receive certain benefits which actually increase the value of the property, and should not compensation be given? Now this is one reason why I fear this provision; if this principle applied only to railroad corporations, I would not have this objection, but it applies to all corporations.

Mr. MANDERSON. Mr. Chairman. I hope this discussion will not be pursued now. It is getting late and I move we now adjourn.

Mr. STRICKLAND. I favor that motion myself, Mr. Chairman, for the reason that I would like to look up this question.

Mr. BALLARD. Mr. Chairman. I hope this motion will not prevail, I hope the members of this committee will remain until we vote upon the question.

Mr. MASON. Mr. Chairman. I hope this motion will be voted down. I hope the committee will stand here until the rising of tomorrow's sun, if we do not come to a vote upon this question before, unless the gentlemen upon the other side will promise that this matter shall not be taken up until Monday. I have to go to Nebraska City tomorrow, to attend to official business and I cannot be here to vote upon the question, as I desire to do.

Mr. MANDERSON. Mr. Chairman. If the gentleman had no other time to argue this question, I would not insist, but the question will come up again. The entire article is to be adopted, and we can debate it then. It is now after our usual hour for adjourning.

Mr. MASON. Mr. Chairman. I am willing to adjourn, and come back here tonight, or I am willing to pass this over until Monday, when the whole convention can be here. Tomorrow, I am compelled to be absent, and others are compelled to be absent. I am not willing to adjourn. I am willing to stay here until tomorrow morning.

Mr. STRICKLAND. I confess that I have listened to this discussion with more interest than to any other question which has come up. What I want is time.

Mr. ESTABROOK. Mr. Chairman. I don't know whether we are absolutely controlled by the embodied wisdom of one gentleman from Otoe. It is time to know who runs the machine.

Mr. MASON. Mr. Chairman. I regret most exceedingly that it should be deemed advisable, upon the part of particular gentlemen to direct their "buncombe" towards me. This has been done in more ways than one. It is a course of argument which I am opposed to. I desire to avoid it; but if it must be continued, open your batteries, and we will slay you with the guns yourselves have cast. I tell you gentlemen, I want to vote upon this question. I don't desire that gentlemen shall prevent me from voting, when my judicial duties call me away, at this time. I am charged with dictating. Instead of dictating, I stand here as an humble suppliant. If there has been a dictatorial voice in this convention, it has not been mine.

Mr. STRICKLAND. Will the gentleman consent to adjourn, if we say we will discuss this question, when the gentleman is ready.

Mr. MASON. Yes, sir. What I desire to do now, is to repel these assaults which have been made upon me, and to ask you that it go no further. If I fall, I will fall with my feet to the foe, and bear in mind, it is not I who have made these personal allusions; and never while I have breath, will I try to dictate to, or influence any man, except by logic and reason; I don't mass any secret assemblies to accomplish my designs. I stand upon what reason I can give, and now, an humble suppliant, ask that this convention shall vote down this motion to rise, but will take a vote now, unless the gentlemen will give me a chance to vote, at some other time, upon this question. It grieves me—yes sir, I am both pained and annoyed to hear the personal allusions that have been made. I came to this convention with no preconceived notions to gratify or carry out. I regret that gentlemen deem it necessary to make assault after assault upon me. There is no uncaged lion here, but there may be one here who fears no danger, and trembles at no evil which inventive minds may suggest.

Mr. ROBINSON. Mr. Chairman. I move that the committee do now rise, report this article back to the convention, with the recommendation that it be made the special order of business for Tuesday afternoon. I offer this as a substitute motion.

Mr. MANDERSON. Mr. Chairman. I would accept the amendment but for one reason, and one only. It has been the practice of this convention, to take up no Article reported to the convention unless in the presence of the Chairman of the Committee. When I made the motion, I did it with no such base designs as the gentleman from Otoe (Mr. Mason) seems to think. I did it in good faith. I would certainly not be in favor of going into this question in the absence of the gentleman.

Mr. LAKE. Mr. Chairman. I don't think it is the disposition of any member of this convention to take up and consider an Article in the absence of the Chairman of the committee. If Judge Mason cannot be here tomorrow morning I certainly am opposed to taking the Article up.

Mr. ROBINSON. Mr. Chairman. I insist on my amendment.

Mr. LAKE. Mr. Chairman. I will object to this amendment, for the reason that we may have some matter under consideration at that time and may not wish to take this up.

Mr. WAKELEY. Mr. Chairman. It seems to me that there is no occasion for this manifestation of spirit from different parties here. I have seen no disposition to press any matter to a vote. I can speak for myself and will say now I will never vote for bringing up anything because of the absence of any of its friends. I care not whether he is the humblest member of the committee or the chairman of the committee. I see no necessity for making this the special order for any particular day. For myself I can not be here on Tuesday next. I wish to vote on this proposition, but if a majority wish to bring this on, on Tuesday let them do it. Now, sir, cannot we address ourselves to the work of this convention in the spirit of business and trust each other? Let us go back from the committee of the whole and agree upon such a plan as will take from no man his opportunity to vote his views on any question.

Mr. ROBINSON. Mr. Chairman. I have a few remarks to make; intimations of unfairness have been referred to but I think there have been no intentions; but one gentleman from Douglas made a plain statement, he said, "you cannot choke off in that way."

Mr. MANDERSON. Do you mean me?

Mr. ROBINSON. No sir, I mean the gentleman on your right.

Mr. MASON. I hope the committee will rise, for I feel that I can safely trust the convention, and have thought so all the while when I said I would have to be absent. For this reason I hope the gentleman will withdraw his motion making it the special order for any time.

Mr. ROBINSON. Mr. Chairman. With the consent of my second I will withdraw the motion.

The CHAIRMAN. The question is on the motion that the committee rise.

The motion was agreed to.

Mr. GRIGGS. Mr. President. The committee of the whole have had under consideration the report of the committee on Bill of Rights and have instructed me to report progress and ask leave to sit again.

Adjournment.

Mr. LEY. Mr. President. I move that the convention do now adjourn until 9 o'clock tomorrow morning.

The motion was agreed to.

So the convention (at six o'clock and forty minutes) adjourned.

TWENTIETH DAY.

Saturday, July 15, 1871.

Convention called to order at 9 a. m. by the president.

Prayer.

Prayer was offered by the Chaplain, as follows:

"Almighty and allwise God, who art able to command the light to shine out of darkness, make plain before us the path of duty, we beseech Thee. May this convention provide well for the State; may the work here done be strong enough to endure the shock of parties and the wear of years and to God, the only wise, shall be praise through Jesus Christ, even praise and glory for ever. Amen."

Reading of Journal.

The secretary read the Journal of the preceding day, which was approved.

Petitions and Communications.

The secretary read the following report from the Commissioners and Inspectors of the Penitentiary.

State of Nebraska, Office of State Prison Inspector.

Lincoln, Nebraska, July 15. 1871.

Hon. S. A. Strickland, President Constitutional Convention:

Sir:—In compliance with a resolution requesting information in regard to the Penitentiary Lands and expenditures of the Prison, we herewith transmit to your Honorable body the following report.

Very respectfully your obedient servants,

W. W. Abbey,
F. F. Templin,
State Prison Inspectors.

The following is a statement of lands sold prior to Nov. 30, 1870:

Part of Section	No. of Sec.	Township	Range	No. of Acres	TO WHOM SOLD	Price per Acre	Total	WHEN SOLD
sw¼	12	14	6	160	Julia Odell	$5 00	$800 00	June 6, 1870
ne¼	4	8	6	160	Samuel Miller	5 50	880 00	" "
se¼	10	8	4	160	Theodore S. Ganter..	5 00	800 00	" 7 "
ne¼	6	12	9	161 43–100	John Jeffries	7 00	1130 00	" 9 "
nw¼.....	12	8	4	160	H. Hurty..	5 00	800 00	" 8 "
sw¼ ..	12	8	4	160	John D. Lottridge...	5 00	800 00	" 8 "
ne¼	24	12	8	160	J. G. Dodge	5 00	800 00	" 13 "
all of	8	8	3	640	W. C. Bavown.......	5 00	3200 00	" 8 "
se¼	24	12	8	160	John D. Lottridge...	5 00	800 00	" 14 "
ne¼	4	14	6	160 48–100	J. M. Chapman.....	5 00	822 40	" 8 "
ne¼	26	9	5	160	J. T. Thompson......	5 00	800 00	Sept. 28, 1870
se¼	4	8	6	159 59–100	Samuel Miller......	5 00	877 15	" 28 "
se¼	26	8	4	160	W. H. B. Stout.....	5 00	800 00	June 6, 1870
sw¼ ...	10	10	5	160	John McManigal	5 00	800 00	Sept. 29, 1870
nw¼.....	6	8	6	180 79–100	John T. Dillon	5 00	903 95	" 28 "
se¼	12	10	5	160	John T. Dillon	5 00	800 00	" 28 "
e½	32	8	4	320	J. T. Thompson......	5 00	1600 00	June 7, 1870
e½ se¼..	10	10	5	80	John McManigal	5 00	400 00	Sept. 29, 1870
se¼	14	9	5	160	Peter Mill	5 00	800 00	" 28 "
ne¼	8	8	6	160	John T. Dillon	5 00	800 00	" 28 "
sw¼	32	10	8	160	Susan M. Clute, Mary S. Wright, assignee	5 00	800 00	" 28 "
ne¼	34	10	5	160	Daniel L. Smith.....	5 00	800 00	" 29 "
sw¼ ...	24	12	8	160	Geo. W. Boyd	5 00	800 00	" 30 "
s½	14	8	4	320	A. L. Thomas	5 20	1664 00	" 28 "

Statement of Lands sold prior to Nov. 30, 1870—Concluded

Part of Section	No. of Sec.	Township	Range	No. of Acres	TO WHOM SOLD	Price per Acre	Total	WHEN SOLD
se¼	30	10	8	147	Samuel McClay	7 00	1029 00	June 6, 1870
nw¼.....	26	9	5	160	Carlton Loomis	5 00	800 00	Sept 28, 1870
n½......	18	8	3	311 17-100	Alpheus Hardy	5 00	1555 85	" 28, "
e½	12	10	8	320	Alpheus Hardy .	5 00	1600 00	June 6, 1870
e½	18	8	4	320	Hugh Montgomery .	5 00	1600 00	Sept 28, 1870
e½	30	8	4	320	Hugh Montgomery ..	5 00	1600 00	June 7, 1870
nw¼.....	10	11	3	160	Chas. F. Templin....	5 00	800 00	Oct 1, 1870
ne¼	30	9	8	160	Elizabeth Helvy ..	5 00	800 00	June 7, 1870
se¼	20	10	8	160	John D. Lottridge...	5 00	800 00	Sept 28, 1870
w½ ne¼.	22	11	6	80	E. J. Connelly, Jr ..	5 00	400 00	Oct 1, 1870
w½ se¼.	10	10	5	80	John McManigal ...	5 00	400 00	Sept 29, 1870
nw¼. .	12	10	5	160	Addie Beecher ..	5 00	800 00	" 29, "
e½	28	10	5	320	W.W. Holmes and S. P. Briggs	5 00	1600 00	" 28, "
w½ .. .	6	12	9	328 30-100	Truman Buck........	6 00	1969 80	Oct 1, 1870
sw¼	22	11	6	160	Samuel Patterson....	5 00	800 00	" "
e½ ...	20	8	4	320	W. H. B. Stout	5 00	1600 00	Sept 28, 1870

Total $41,630 76

Number of acres appropriated..........................	32,044.00
Number of acres sold..	8,111.76
Number of acres remaining unsold	23,931 21

Statement of Lands Sold Since Nov. 30th, 1870

Part of Section	No. of Sec.	Township	Range	No. of Acres	TO WHOM SOLD	Price per Acre	Total	WHEN SOLD
se¼	6	8	3	160	HC Riorden, Bracken	3 70	592.00	May 1, 1871
n½	14	8	3	320	Thomas Doane	4 05	1296 00	" 1, "
sw¼	10	9	3	160	Elon Percy	4 80	768 00	" 1, "
se¼	14	9	3	160	Claudius Jones	3 15	504 00	" 3, "
s½	20	9	3	320	Elon Percy	4 60	1472 00	" 1, "
e½	28	10	3	320	R B Packard	4 05	1296 00	" 1, "
nw¼	2	11	3	159.44	W W Wilson	3 00	478 32	" 3, "
ne¼	8	11	3	160	Edgar Holmes	4 15	664 00	" 1, "
w½	2	8	4	325.14	Thomas Doane	4 10	1333 07	" 1, "
se¼	8	8	4	160	Elon Percy	5 00	800 00	" 1, "
ne¼	6	10	4	160	W J Everhart	4 50	720 00	" 1, "
sw¼	28	10	4	160	Henry Eaton	3 85	616 00	" 1, "
se¼	28	10	4	160	A R Wightman	3 85	616 00	" 1, "
se¼	30	11	4	160	J H Courter	3 60	576 00	" 2, "
s½ se¼	22	8	5	80	J J Hochstetter	3 25	260 00	" 2, "
n½ se¼	22	8	5	80	J J Hochstetter	3 25	260 00	" 2 "
ne¼	22	8	5	160	J J Hochstetter	3 25	520 00	" 2, "
ne¼	28	9	5	160	W W Holms	3 50	560 00	" 2, "
ne¼	6	8	6	167.48	W W Holmes	3 35	561 05	" 2, "
e½ ne¼	22	11	6	80	S F Shaw	4 95	396 00	June 8, "
s½ ne¼	10	14	6	80	Peter Campbell	3 00	240 00	" 8, "
n½ se¼	10	10	8	80	Wm J Miller	3 00	240 00	May 1, "
s½	14	10	8	320	Geo R Swallow	3 00	960 00	" 3, "
se¼	24	10	8	160	C Bowker	3 50	560 00	" 3, "
w½ sw¼	24	10	8	80	W J Miller	3 50	280 00	" 3, "
e½ sw¼	24	10	8	80	J R Vanmeter	3 50	280 00	" 3, "
nw¼	26	10	8	160	W W Wilson	3 00	480 00	" 3, "
se¼	26	10	8	160	D J Quinby	3 00	480 00	" 3, "
nw ¼	24	12	8	160	Wm Dailey	3 50	560 00	June 8, "
s ½	28	12	8	320	C Bowker	4 00	1280 00	May 1, "
n½	32	12	8	320	D J Quinby	3 00	960 00	" 2, "
ne¼	2	8	7	147.84	John H Bracken	4 00	590 16	" 2, "
ne¼	26	9	7	160	Prentiss D Cheney	4 10	656 00	" 1, "
nw¼	26	9	7	160	J N Echman	5 05	808 00	" 1, "
sw¼	12	9	7	160	D A Sherwood	4 00	640 00	" 2, "
nw¼	12	9	7	160	D A Sherwood	3 70	592 00	" 2, "
nw¼	14	9	7	160	W R Phillips	5 05	808 00	" 1, "
se¼	14	9	7	160	W R Phillips	4 80	768 00	June 8, "
s½ nw¼	20	9	7	80	Joseph Jones	4 65	372 00	May 1, "
n½ nw¼	20	9	7	80	Alexander Rose	4 65	372 00	" 1, "
w½ sw¼	20	9	7	80	Edgar Jones	4 65	372 00	" 1, "
e½ sw¼	20	9	7	80	Wm Jones	4 65	372 00	" 1, "
w½	22	9	7	320	Phillip Rhodes	4 05	1296 00	" 2, "
n½	28	9	7	320	J J Hochstetter	4 20	1344 00	" 1, "
sw¼	32	9	7	160	S F Shaw	3 70	592 00	" 1, "
se¼	10	11	7	160	Jane Sarzitin	4 05	648 00	June 9, "
w½	18	11	7	314 52	W W Wilson	3 50	1100 82	" 8, "
ne¼	22	11	7	160	Elon Percy	3 60	576 00	May 2, "

Statement of Lands Sold Since Nov. 30th, 1870

Part of section	No. of Sec.	Township	Range	No. of Acres	TO WHOM SOLD	Price per Acre	Total	WHEN SOLD
se¼	6	14	7	160	Edmund Millett	3 50	560 00	June 8, 1871
nw¼	8	14	7	160	Edmund Millett	3 00	480 00	“ “
sw¼	10	14	7	160	Geo H Stocking	4 30	688 00	May 1, 1871
sw¼	14	14	7	160	Moses Stocking	3 50	560 00	“ 1, “
w½	22	15	7	320	H C Riordan and John H Bracken	3 50	1120 00	“ 2, “
ne¼	34	15	7	160	Thos and Michael Barry	4 50	720 00	“ 1. “
n½ se¼	34	15	7	80	Thos and Michael Barry	4 50	360 00	“ 1, “
s½ se¼	34	15	7	80	W W Wilson	4 50	360 00	“ 1, “
sw¼	8	9	8	160	C Bowker	4 05	648 00	“ 2, “
s½	14	9	8	320	C Bowker	3 50	1120 00	“ 3, “
e½	18	9	8	304.43	Frelone A Benton	4 00	1217 72	“ 2, “
se¼	20	9	8	160	J J Hochstetter	4 30	688 00	“ 1, “
sw¼	22	9	8	160	James M Chilton	4 20	672 00	“ 1, “
nw¼	22	9	8	160	James M Chilton	4 00	640 00	“ 1, “
w½	28	9	8	320	J J Hochstetter	4 60	1472 00	“ 1, “
w½	34	9	8	320	J J Hochstetter	4 30	1376 00	“ 1, “
nw¼	2	10	8	160	M L Wheeler and C F White.	3 25	520 00	“ 2, “
sw¼	2	10	8	159.85	Geo W White	3 25	511 51	“ 2, “
nw¼	4	10	8	158.24	Albert F Smith	3 00	474 72	“ 2, “
ne¼	4	10	8	158 24	C Bowker	3 00	474 72	“ 2, “
se¼	22	10	8	160	J G Meak	3 50	560 00	June 8, “
se¼	2	10	8	160	M L White	3 50	560 00	May 2, “
ne¼	10	10	8	160	Joseph Lovelace	3 50	480 00	“ 1, “
n½ nw¼	14	8	7	80	S F Shaw	4 10	328 00	“ 1, “
e½	8	9	3	320	T B Wallis	3 75	1200 00	June 3, “
n½	26	9	3	320	J W Sibley	4 30	1376 00	“ 3, “
w½	10	9	8	320	Jeff Shicken	3 70	1184 00	“ 3, “
w½	24	9	3	320	Jeff Shicken	3 80	1216 00	“ 3, “
s½	2	14	7	320	W H B Stout	4 00	1280 00	“ 3, “
sw¼	10	8	3	160	John D Lottridge	3 55	568 00	“ 3, “
all	6	9	3	653 50	Ira Davenport	4 00	2614 00	“ 3, “
n½	34	9	3	320	“ “	3 70	1184 00	“ 3, “
w½	2	10	3	321.53	“ “	3 70	1189 66	“ 3, “
e½	8	10	3	320	“ “	3 50	1120 00	“ 3, “
w½	34	10	3	320	“ “	3 80	1216 00	“ 3, “
e½	10	10	4	320	“ “	3 50	1120 00	“ 3, “
n½	2	8	5	337 15	“ “	4 30	1444 75	“ 3, “
e½	4	8	5	328.21	“ “	4 30	1411 35	“ 3, “
e½	2	10	5	318.96	“ “	5 00	1594 80	“ 3 “
s½	14	11	6	320	“ “	3 75	1200 00	“ 3, “
w½	22	8	7	320	“ “	4 10	1312 00	“ 3, “
w½	14	11	3	320	“ “	4 10	1312 00	“ 3, “
nw¼	32	9	7	160	“ “	4 85	776 00	“ 3, “
e½	12	8	5	320	Wm Daily	3 50	1120 00	“ 3, “

Statement of Lands Sold Since Nov. 30th, 1870

Part of Section	No. of Sec.	Township	Range	No. of Acres	TO WHOM SOLD	Price per Acre	Total	WHEN SOLD
sw¼	6	10	5	154.11	Ira Davenport.......	4 75	732 04	“ 3, “
w½	4	11	6	314.91	“ “	3 75	1180 91	“ 3, “
ne¼......	10	11	6	160	“ “	3 50	560 00	“ 3, “
sw¼	10	11	6	160	“ “	3 55	568 00	“ 3, “
sw¼	8	8	6	160	“ “	4 50	720 00	“ 3, “
ne¼......	6	7	7	160.48	“ “	3 80	699 82	June 8, “
e½.......	8	8	5	320	“ “	3 50	1120 00	“ 8, “
n½ nw¼.	14	8	7	80	S F Shaw	4 10	328 00	“ 8, “
s½ nw¼.	14	8	7	80	D G Matthews and R K Shaw	4 10	328 00	“ 8, “
sw¼	14	8	7	160	D G Matthews and R K Shaw...........	4 10	656 00	“ 8, “
ne¼......	10	11	7	160	Jane Sarzitin.... ..	4 25	680 00	“ 8, “
se¼	18	8	6	160	Daniel S Baker.....	4 50	720 00	“ 8, “
se¼......	6	11	3	160	W W Holmes........	3 65	584 00	“ 8, “
se¼	22	9	3	160	Sarah, Percy and Sarah S Parker........	4 55	728 00	“ 8, “
ne¼......	22	9	3	160	H C Riordan	4 55	728 00	“ 8, “
se¼......	6	12	9	160	“ “	5 25	840 00	“ 8, “
ne¼......	26	11	3	160	“ “	3 70	592 00	“ 8, “
sw¼	26	11	3	160	“ “	4 00	640 00	“ 8, “
sw¼	10	8	7	160	C F White..........	4 05	648 00	“ 8, “
nw¼.....	10	8	7	160	C F White..........	4 05	648 00	“ 8, “
all	4	11	3	639.20	Mima J Ruby	5 00	3196 00	“ 8, “
n½	8	7	7	320	W P Ensey	3 25	1040 00	“ 8, “
nw¼.....	6	7	7	154.24	C F White..........	4 05	665 20	“ 8, “
w½	2	9	8	318.87	W P Ensey.........	3 55	1132 00	“ 8, “
e½.......	18	14	7	320	S W Gilchrist ..	3 50	1120 00	“ 8, “

RECEIPTS

From sale of lands to June 30, 1871................................	$136,037.41

EXPENDED

Paid in the construction of the penitentiary and the necessary incidental expenses from the funds arising from the sale of lands	87,946.81
Balance in the state treasury June 30, 1871..............	$ 49,090.61
Paid for erecting temporary penitentiary as per special appropriation approved March 4, 1870	$ 5,000.00
Total amount expended to June 30, 1871	$ 92,946.81
No. acres of land appropriated for penitentiary purposes...........	44,795.06
No. of acres sold to June 30, 1871	32,438.10
Remaining unsold	12,356.96
Average price per acre	$ 4.109

W. W. Abbey, Inspector.
F. Templin, Inspector.

Nebraska State Prison, Warden's Office, Lincoln, Nebraska.

June 1, 1871.

To the Honorable Board of Inspectors:

Gentlemen:—In compliance with your request I herewith submit to you a condensed statement of the affairs of this prison from December 1st, 1870 to June 1st, 1871:

CASH RECEIPTS

Dec. 26, 1870	Lancaster county, account keeping prisoners	$ 69.60
Feb. 1871	Gate receipts for months of Dec., Jan. and Feb	12.55
Feb. 28, 1871	Received of H. Ashman on account of merchandise	9.10
April 1871	Gate receipts March and April	15.75
	Gate receipts May	12.85
May	Received on account of boarding foreman	18.25
	Total	$138.10

ASSETS

Due Nebraska State Prison

Stout & Jamison, convict labor	$2,000.75
Lancaster county, keeping county prisoners	14.41
James M. Jamison	9.25
Hamilton county, to keeping prisoners	257 30
Amount of property as per inventory	2,873 65
Total	$5,155.36

Dec. 1. Number of prisoners in confinement 1870		33
Received since Dec. 1st		12
Pardoned	7	
Escaped	10	
Remaining		28

EXPENSES

December 1870	$1,314.58
January 1871	1,493.16
February "	1,147 14
March "	1,496.13
April "	1,657.74
May "	1,443.70
Total	$ 8,552.45
Expenses over receipts for year ending Nov. 30, 1870	10,076.81
Total expenditures since July 1870	$18,628.12

List of Officers and Salaries of Nebraska Prison.

No.					
1.	T. C. Fielding, Warden			(per month)	$125 00
1.	Leroy Royce, Deputy			”	75 00
1.	A. Patterson, Physician			”	75 00
1.	J. J. Roberts, Chaplain			”	25 00
1.	Chas. Whipple, Guard			”	35 00
2.	Joseph S. Phebus, Capt. Night watch			”	50 00
3.	S. W. Sheridan, Night watchman			”	35 00
4.	H. Higly,	”	”	”	35 00
5.	Jas. Brown	”	”	”	35 00
6.	R W. Fielding	”	”	”	35 00
7.	Walter C. Snow, Gate		”	”	30 00
8.	Wm. Dilworth, Picket		”	”	30 00
9.	W. A. H. Coday,	”	”	”	30 00
10.	Thomas Brown,	”	”	”	30 00
11.	Winson Hunt, Gardner		”	”	30 00

Since making up the above list I have decided to cut off two of the number and thus reduce our number of guards to eight and dispense with the gardener. I am satisfied after my short experience here that this number will be sufficient for the safety of this institution.

T. C. FIELDING, Warden.

The Secretary read the following communication:

Omaha, Neb., July 12, 1871.

Honored Sir:—Your official communication addressed to the State Board of Immigration embodying the resolution of the Constitutional Convention of Nebraska was duly received, and in response thereto, I beg to say that, as far as the resolution may be construed to apply to the office of State Superintendent, I shall be pleased to reply immediately after the meeting of the Board of Immigration, which convenes 20th inst.

In meantime I have the honor to be your most obedient servant,

J. H. NOTEWARE,
State Supt. Immigration,
State of Nebraska.

To HON. S. A. STRICKLAND,
Prest. Constitutional Convention,
State of Nebraska.

The Secretary read the following communication:

To the Hon. the President of the Constitutional Convention.

Sir:—I have the honor to inform you, and through you, the honorable Convention over which you preside that I have had placed in my custody 100 copies each of "Woodhull & Claflin's Weekly." and "The Revolution," for the use of the Convention, and which are at their disposal.

Lincoln, July 15, 1871.

MRS. LYDIA BUTTLER.
President of the Ladies' Suffrage Society, State of Nebraska.

Mr. ESTABROOK. Mr. President. I move you, sir, that the thanks of this Convention be returned to the donors, and that the clerk be directed to receive the papers for the use of such members as desire to see them.

The ayes and nays were demanded, with the following result: Ayes, 26; noes 16—As follows:

Ayes.

Ballard,
Cassell,
Curtis,
Estabrook,
Kirkpatrick,
Granger,
Kenaston,
Kilburn,
Lake,
Gibbs,

Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Moore,
Neligh,
Philpott,
Price,
Reynolds,
Shaff,
Speice,
Stewart,
Thummel,
Thomas,
Tisdel,

Nays.

Abbott,
Campbell,
Eaton,
Gray
Griggs,
Hinman,
Parchin,
Scofield,
Sprague,
Stevenson,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,

Absent and Not Voting.

Boyd,
Mason,
Parker
Grenell,
Myers,
Robinson,
Hascall,
Newsom,
Woolworth,

The motion was agreed to.

Mr. McCANN. Mr. President. I move that the further order of business be dispensed with and that the Convention resolve itself into committee of the whole to discuss the report of the committee on future amendments.

Female Suffrage.

Mr. CASSELL. If the gentleman from Otoe (Mr. McCann) will give way for a moment, I have a memorial to present.

Mr. McCANN, I give way for the present.

The secretary read the memorial as follows:

To the honorable Constitutional convention of the State of Nebraska.

The undersigned, your memorialists, respectfully demand that in the constitution now being framed, provision shall be made for extending to females, precisely as to males the right of sufrage. In support of this demand, we respectfully submit the following propositions:

1st. By the fourteenth amendment to the Constitution of the United States, the complete citizenship of females, as well as males, is declared; and by the fifteenth amendment the right of all citizens to vote is distinctly affirmed.

2nd. Females are governed exactly as males. To do this without their consent is unjust. The only method of declaring such assent is through the ballot box.

3rd. Females are taxed in all respects precisely as males. Representation as a corollary to this liability is demanded by principles lying at the very foundation of Republican government.

4th. Negroes have been elevated from the degredation of slavery to the plane of respectable citizenship by the ballot, and it is universally conceded that the cause of civilization and republican government has been advanced thereby. In our opinion the mothers, wives and sisters of the State are no less worthy the privileges of complete citizenship.

5th. Lunatics, idiots and children, by reason of immature intellect, together with such persons as are convicted of infamous crime, are excluded from the privileges of the ballot. We deem it an indignity, illy deserved, by females exempt from these disabilities, to be placed irrevocably and by constitutional law in this category of incompetent persons and outlaws.

6th. Emigrants from the old world, never admitted to the right of suffrage in their native country, and wholly unused to the contemplation of matters of governmental concern, are allowed the privileges of the ballot six months after landing on our shores. A recognition of the superiority of these to the intelligent native born women of the State by our fundamental law is an indignity against which we respectfully but most earnestly protest.

For these among other reasons, we ask this our prayer be granted:

Mrs. Lydia Butler, Mrs. Jennie Cassell, and 71 others.

Mr. BOYD. Mr. Chairman. I move to refer the petition to the Committee on Rights of Suffrage.

The motion was agreed to.

Resignation of Page.

Mr. PRICE. Mr. President. I wish to offer a resolution. The secretary read the resolution as follows:

Resolved, that this Convention dispense with the services of Master Whitesides, as page.

Mr. STEWART. I move its adoption.

Mr. TOWLE. Mr. President. I would like to hear from the mover of the resolution, his reason for offering it.

Mr. PRICE. My reason is that we want a page who will pay a little more attention to the business on this side of the House.

Mr. LAKE. Mr. President. It is disagreeable to me to say anything favoring a resolution of this kind, but it is well known on this side of the House, that almost ever since the commencement of this convention, we have been practically without the services of a page; while the young man upon the other side of the House (Master Odell) has been very attentive, we have had great difficulty in having our matters attended to. If we desire anything from the other side of the house it is hard to get the attention of the page, and we generally have to go ourselves. Yesterday afternoon he was absent a great portion of the time, and several times during the afternoon I had use for papers and books which were on the other side of the House, and was compelled to pass between the gentlemen on the floor and the chairman. All this is very disagreeable. We want the service of a young man who will be very prompt and attentive during the sessions of this body; one who will be ready at the call of any member of the convention. These are the reasons; there are others, which, perhaps might be urged but I prefer not to mention them.

Mr. PHILPOTT. Mr. President. With regard to Master Whitesides, I will say that he wishes to resign. I will say further that he has had no one to look after him, or call his attention to his duties. If it had been he would have been more attentive. I move that the resignation of Master Whitesides, as page to this convention be accepted.

Motion agreed to.

Election of Page.

The PRESIDENT. The question is upon proceeding to the election of a page.

Mr. CAMPBELL. Mr. President. I move that we elect by acclamation Master Wakeley.

The motion was agreed to.

Mr. WILSON. I move that a vote of thanks be offered to our young gentleman on this side of the House, (Master Odell) for his faithfulness.

Mr. HINMAN. He may not do so well afterwards.

Mr. WAKELEY. Mr. President.

with the consent of the Convention, I feel like thanking the convention for the selection of the young boy whom they have seen fit to elect. I hardly think it necessary to say that my connection with this Convention had anything to do with his selection. If I thought it had I should feel bound to deny it.

Mr. CAMPBELL. Mr. President. I thought nothing about it until this matter was brought up, and saw the young man here and I noticed he was a bright and active boy.

Mr. ESTABROOK. This young man, (Master Wakeley) lives near my home, and he and his father have roomed with me since he came down here and I am satisfied he did not come here to get office. He is called "Toodles" and all you will have to do is to call "Too" and he will come.

Unfinished Business.

The secretary read a resolution offered by Mr. Cassell as follows:

Resolved, That it shall not be lawful for any member of this convention to be a candidate for any of the offices created or provided for in this constitution for the period of one year.

Mr. TOWLE. Mr. President. I move the resolution be referred to the committee on schedule.

Mr. PHILPOTT. Mr. President. I move the resolution be laid on the table.

Mr. ESTABROOK. I hope that it may go to a committee as it is a mattre of more importance than might seem at first sight.

Mr. NEWSOM. "What is the matter with you " (Laughter.)

The PRESIDENT. The question is on laying on the table.

The "ayes" and "nays" are demanded.

The secretary proceeded to call the roll.

Mr. PHILPOTT, (when his name was called, said,) Mr. President, I rise to explain. There is a gentleman here which I wish to vote for for chief justice, and another for governor, therefore I will vote "aye."

The vote was taken and the result was announced—"Ayes," 8 "Nays," 35—as follows:

Ayes.

Abbott,
Campbell,
Gibbs,
Granger,
Philpott,
Scofield,
Shaff,
Wilson,—8.

Nays.

Ballard,
Boyd,
Cassell,
Curtis,
Eaton ,
Estabrook,
Gray,
Griggs,
Hinman,
Kilburn,
Kenaston,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Moore,
Neligh,
Parchin,
Price,
Reynolds,
Robinson,
Sprague,
Spiece,
Stewart,
Thummel,
Thomas,
Towle,
Tisdel,
Vifquain,
Wakeley,
Weaver.—35.

Absent or Not Voting.

Grenell,
Hascall,
Mason,
Myers,
Newsom,
Parker,
Stevenson,
Woolworth,
Mr. President.—9

The PRESIDENT. The question now is upon referring to the committee on Schedule.

The motion was agreed to.

Leave of Absence.

Mr. WAKELEY. Mr. President. I ask leave of absence until Wednesday next.

Leave granted Nem. con.

Committee of the Whole.

Mr. McCANN. Now Mr. President, I renew my motion to go into Committee of the Whole on the report of the Committee on Future Amendments.

The motion was agreed to.

So the Convention in the Committee of the Whole—Mr. Reynolds in the chair—proceeded to consider the report of the committee on Future Amendments.

The secretary read the report as follows:

Report of the Committee on Amendments.

By Mr. M. Ballard, Chairman

Mr. PRESIDENT:

Your Committee on Future Amendments beg leave to present the following, and would respectfully recommend that the same be adopted by the convention:

Any amendment or amendments to this constitution may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of the members elected to each house, such proposed amendment or amendments shall be entered upon their journals, with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published three months before the next election in at least one newspaper in every county in which a newspaper shall be published, and if in the legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the Secretary of State shall cause the same again to be published in manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner and at such time, (at least three months after being so agreed to by the two houses,) as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this State voting thereon, such amendment or amendments shall become a part of the constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years; provided, that if more than one amendment be submitted they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

Sec. 2. Upon the expiration of twenty-five years from the adoption of this constitution, or any year thereafter, the legislature may provide by law for the submission of the question: "Shall there be a convention to revise or amend the constitution?" and should a majority of the legally qualified electors voting thereon decide in favor of calling a convention for such a purpose, then the legislature at its next meeting shall provide by law for the election, qualification and pay of delegates to such convention.

We, the undersigned, would respectfully represent that we cannot concur with the majority of the committee as to the second section herein reported, for the reason that we believe that the first section contains all that is necesary on the subject of future amendments.

M. BALLARD
JOHN C. MYERS.

Mr. WILSON. Mr. Chairman. I wish to amend the first section by striking out the words "three months" wherever they occur and insert the words "six months." There are a great many people in our state who do not take the papers and would not hear of the amendment when the time had expired.

Mr. KIRKPATRICK. I am willing to assert that all citizens of Nebraska will become acquainted with it in less than six months, and if we advertise it that time, it will cost a large sum of money.

Mr. THOMAS. I would like to enquire from the chairman of this committee, from the Constitution of what state does the section come.

Mr. BALLARD. Mr. Chairman. I remark for the information of the gentleman that it is virtually copied from the constitution of the state of Pennsylvania, and while I am up I will state I hope the amendment will not prevail. It would incur an unnecessary expenditure of money to the people. How does this article propose an amendment. An amendment must pass through two legislatures before it is submitted finally to the people for a vote. It must be advertized three months in every county in the state in which there is a newspaper published. It seems to me that by that time the people will understand what the amendment is, if not my constituents are much more ignorant than I imagined they were. The process is slow but sure, and I hope the amendment will not prevail. As I understand it, the aim and object of this convention has been economy. I hope they will carry it out.

Mr. LAKE. It seems to me that the proposed amendment is entirely unnecessary and will increase the cost very much. This section now provides that amendments shall pass one legislature, it must be agreed to by a majority of the members elected to each house, senators and representatives. Then it is to be published three months before the next election for members of the legislature, that brings it before the people and they elect their senators and representatives with a special reference to the proposed amendment to the constitution. Then it must again pass the legislature, an entirely new body, fresh from the ranks of the people, chosen by the people, with the understanding that the same is again to come before the legislature for their approval or rejection. If the succeeding legislature, after it has been published for three months next preceding the election, shall again pass the proposed amendment it will be pretty certain that the people have acquiesced in it, but to be certain that they have after it has passed the second legislature, it is again published for three months and submitted to the people for their ratification, so that it seems to me that all the safeguards necessary to throw around the amendment of an organic law is here provided for. There can be no surprise to the people, it is to be published for three months in all the counties in the state where a newspaper is published, and the people must become conversant with the proposed amendment. They then go to the polls and elect their representatives, instructing them in their conventions whether they favor the proposed amendment or not. Their representatives then either endorse or reject the action of the preceding legislature. This being done, if it is rejected, there is an end of it, if they confirm the action of the preceding legislature and again vote for these amendments to the Constitution, it is again published and the people must either adopt or reject them. I can find no fault with this provision, indeed, it seems to have received a good deal of consideration where it was first adopted and to have commended itself to all the members of the committee who have had this subject under consideration. We have as to the first section the report of the entire committee on Amendments to the Constitution. I seconded this amendment for the purpose of bringing it before the committee, but cannot support it.

Mr. ABBOTT. I move as a substitute for the amendment, to strike out from the word "manner" in the ninth line to the word "as" in the tenth line, and add after the word prescribe the words "at the next general State election."

Mr. WILSON. As it seems to me to be contrary to the wish of this committee, I do not wish to be contrary; but I feel that even in the last advertisement for this convention sufficient notice was not given. If this was so that notice could be given in all the languages used in the state I would not make this amendment. But I will withdraw my motion to amend entirely.

Mr. TOWLE. I do not think this motion of the gentleman from Hall (Mr. Abbott) will commend itself to the consideration of this body. There may be amendments proposed by the way desired by the people that shall be of that character that they should not be submitted at a general election. The legislature might adjourn by the month or a few days previous to the next election, it might be a general or called session, and consequently the time would be too short.

Mr. BALLARD. I hope the mover will explain to this Convention what he means by the general election. How will his amendment chime in?

Mr. WAKELEY. I wauld like to say a word in favor of the amendment. It seems to me a very necessary and proper amendment. As the section now reads the legislature are left entirely to their discretion in regard to the time when the proposed amendment shall be submitted to the people. It seems to me very clearly that it is better it should be submitted at a general election, where there will be a full vote polled. Everybody knows it is almost impossible to secure a full vote at a special election held for any special purpose. And for amendments to the Constitution, involving a change in the organic law as every amendment does, at a general election, where the greatest number of voters assemble at the polls, is the best time. I can hardly imagine a case in which it will be necessary to act upon the proposed amendment so speedily as to require a special election to be holden for that purpose. I object to the constitution of the state being changed at a special election for the reason that it may result in adopting an amendment which does not agree with the sentiment of a majority of the voters. We all know, as a practical matter, what the result of a special election is. That those particularly and specially interested in carrying the matter which is proposed, will be active in rallying voters at the polls, while, very often those who are really opposed to it and would vote against it. if they were at the election, do not act with the same zeal and under the same stimulus and incentive as those who have proposed the amendment and gotten the machinery in operation to carry it. These are my reasons for favoring this amendment. I should dislike very much to see this section adopted in its present form.

The CHAIRMAN. The gentleman from Hall (Mr. Abbott) makes this amendment—add after the words "manner" in the ninth line, the words "at a general election" and strike out the words "and at such time."

Mr. WEAVER. I can see very well, that under the steam and force generally put in motion at these general elections, a reason why the amendment should not be submitted to the people at that time. I think it should be, in all instances proposed at a special election. For that reason I shall vote for the article as it now stands.

Mr. PRICE. I hope the article as submitted by the committee will not be changed. It seems to me it is sufficiently comprehensive and subserves the interests of the people in the manner reported, as it would be if it were changed. In this we find the manner and time for submitting the proposed amendment is left discretionary with the legislature. I think it is wise and best. It seems to me that if there is not sufficient spirit to turn out at a special election there would not be sufficinent to do it at a general election. I shall vote for the article as it stands.

Mr. BALLARD. I wish to answer one or two arguments offered by my learned and honored friend from Douglas, (Judge Wakeley). His argument in favor of the amendment seems to be about this—that if the article or section is passed as it came from the hands of the committee that there will be danger of the legislature bringing about a premature action, and the adoption of some dangerous article. Now sir, I do not know whether the remark which has gone the rounds in the newspapers is true or false, which says, that this Convention is the embodiment of the wisdom of the state of Nebraska. For the sake of argument I will say it is true. Then I will apply that in this case, and ask him how long did the people of Nebraska have to look up this convention? Was not done very hastily? But I apprehend the argument is not well founded for this reason. It seems to me this section, in this regard, especially guards against this thing. This is a question upon which they elect their representatives and senators, therefore I am certainly opposed to the amendment. and hope it will not prevail.

Mr. ABBOTT. Mr. Chairman. I think that the reasons given for the conclusion to which the gentleman arrives are unwarranted. He will agree with me, that the vote calling this convention together, was a very slight one. We want a full expression from the people of this state on these questions, and for this reason, I want them voted upon at a general instead of a special election.

Mr. MOORE. Mr. Chairman. As I was a member of the committee on Future Amendments, I took some time in considering the subject now being discussed, not only in selecting the language there used, but also in examining this particular section in the constitution of other states. I think—so far as I can remember—that we all agreed upon this point. I have only a few words to say. In the first place, the people are the only ones to be consulted in this matter, if they get what they want, conventions and legislatures may go for naught. They have only to ask for what they want. and I think they will get it. I think the provision sought to be inserted in this constitution, is sufficiently clear and explicit. If an amendment is sought to be proposed to this constitution, in the future, the legislature, in either house, may propose the matter. The members are elected by the people, and they are supposed to understand the wants of the people. This proposition goes before the people in an advertisement of three months, and in that time, every man, woman and boy in the state can read it. It does not take the people of this state three months to find out anything that the wisdom of the legislature may present before them. Next it comes before the legislature, chosen by the same people, and a large proportion of that legislature is chosen expressly upon this question. It then goes before the people in another advertisement of three months for the people to read and make their endorsement thereon. Then it goes before the people to be voted upon. It has been urged here that a general vote of the people cannot be had except at a general election. Let me tell you that if it is a matter in which the people of the whole state are interested, they will turn out and vote, whether it is at a special or general election. I am satisfied that where you have the passions, and party feeling of men excited they will vote upon this question less intelligently, than they will at a special election when party feeling does not come in and when there is but one question to be voted upon. I am in favor of letting this section stand. I believe it will serve a good purpose in the constitution. I did object to the five years provision, but now I believe that is right.

Mr. ROBINSON. Mr. Chairman. While I have no doubt that the committee who prepared this article in the constitution, prepared it deliberately and very carefully, I am still inclined to favor the amendment of the gentleman from Hall (Mr. Abbott.) If I thought every amendment which is proposed to our constitution would be favorable to a particular party's views, I would be in favor of submitting the question to the people, at a general, instead of a special election. People do not turn out at special elections. I know that a proposition to vote fifty thousand dollars was voted upon at a special election in our town a few days ago. I was opposed to the proposition. But the fact is, I forgot all about the election, and did not vote at all, and the bonds were voted upon us. Now, if it had been at a general election, and I had been anxious to carry some particular party principles, I would have been sure to have gone. The question was of sufficient importance to call out a general expression of the views of the people, but it did not. If a man comes to the polls in order to support his party candidate, it is very easy for him to vote upon certain propositions which may be submitted, but if they are submitted at a special election, he is almost certain to forget it. If one party is trying to carry a particular project, then they will turn out and vote. I think it ought to be submitted at a general election.

Mr. THOMAS. Mr. Chairman. I am in favor of this vote being taken at a general election. We all know that even in general elections, where there is no particular party measure to secure, it is hard to get people out, and at a special election when no party measure is at stake, it is impossible to get them out. If we allow the legislature to provide that this matter is to be submitted at a special election, it seems to me the people of the country—the farmers generally will not turn out. I know in a town, the people do turn out. I believe if this is submitted at a special election we leave the question to be decided by the people of our cities and towns. I know of no more important question, of a people changing their constitution. For these reasons, Mr. Chairman, I am in favor of inserting the words, "at a general election." I believe this plan has been adopted in most of the other states of the Union. Even if those words are not inserted, words of similar import are—that it should be an election at which members of the legislature are elected, as our constitution now stands at the present time, it requires—I will read part of the section on "Amendments."

"If at any time a majority of the Senate or House of Representatives shall deem it necessary to call a convention to revise or change this con-constitution they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature."

This amendment leaves the constitution with regard to this point, as our present constitution provides.

I believe at special elections there is' scarcely ever a full vote, and I don't believe the people will turn out in full for this purpose at a special election. Therefore I am not in favor of leaving the matter to the legislature.

Mr. BOYD. I would ask the gentleman from Washington(Mr. Ballard) whether under this article the question may not be submitted at a general election.

Mr. BALLARD. I think so sir.

Mr. BOYD. I am in favor of submitting it at a general election. I move to strike out all after the word "the" in the ninth line to the word "and" in the tenth line, and substitute in the place the words, "electors of this state for adoption or rejection at the next election of members of the legislature in such manner as may be prescribed by law."

Mr. BALLARD. Mr. Chairman. I cannot see the consistency of the argument of the gentleman, but I can see the inconsistency. The gentleman from Lancaster (Mr. Robinson) in his speech speaks about their voting $60,000 in bonds here at a special election when they did not get a full attendance at the election, and another gentleman says we cannot have a full attendance at a special election—Query—Will the legislature submit this to the people when they don't want it, a matter of such importance? I will tell you when it is that you can have a full attendance at an election, it is when politicians go out into the field and work, and buy up votes if necessary. Something may occur by which the people may want an expression on a proposed amendment before the time for a general election. I think there is danger in inserting this amendment.

Mr. ABBOTT. Did you have this question up in your county on the railroad bonds.

Mr. BALLARD. Yes, sir, we did.

Mr. ABBOTT. How did you like it?

Mr. BALLARD. Well, I will tell the gentleman. There was a railroad company wanted $150 000 out of our county. With us it was submitted at a special election, and the only objection I had to it there was too good an attendance, there were too many votes cast.

Mr. WAKELEY. Would that have been the case at a general election?

Mr. BALLARD. I suppose it would if the same influences were used, that is plenty of whiskey, and money to buy up votes.

Mr. ROBINSON. Mr. Chairman. It appears by the statement of the chairman of the committee that reported this article that the people may want an expression sooner than a general election, but the section says that an amendment shall not be submitted oftener than five years, and before a general election may come around the thing may be settled. I think we should go slow about amending our fundamental laws, the advantage is in submitting this at a general election.

Mr. BOYD. Mr. Chairman. I rise to a personal explanation. The gentleman from Washington, (Mr. Ballard) speaks of money being used in his county to buy votes for the Omaha & Northwestern railroad, of which I had the honor to be president at the time of the election. To my certain knowledge there was not one dollar used by that company to influence any vote.

Mr. BALLARD. Do you not know that there was money used?

Mr. BOYD. No sir.

Mr. MANDERSON. Mr. Chairman. I rise to a point of order,

Mr. BALLARD. I am sorry the gentleman did not think of a point of order before.

Mr. EATON. Mr. Chairman. In regard to this question of submitting this at a general election. This thing was passed through the committee without any discussion; and as a member of that committee I will express my opinion, that it is a very dangerous matter to leave this so that the Legislature may submit as important a matter to a special election.

Mr. KIRKPATRICK. Mr. Chairman. There is an old saying, "In the abundance of counsel there is safety." I am inclined to think I can make up my mind what I ought to do. With other persons it is not the case. One gentleman urges as a reason why it should not be urged at a general election is that there is political influence at work, therefore a Constitutional amendment would not receive the just and proper consideration of the voters. If I cannot hear something more convincing than this discussion, I think I will be bound to support the report of the committee.

Mr. SPRAGUE. I shall vote in favor of the amendment. There has been an opinion expressed here that you cannot amend the Constitution in less than five years. I do not so understand it. I understand it to mean this; if wrong I want to be corrected. If a proposition has once been submitted and rejected, this proposition provides, that the same proposition shall not be submitted for the next five years. It does not take five years to get an amendment to the Constitution. It only takes, from the time it is recommended by the first Legislature until it shall pass through the next legislature and be voted on by the people three months thereafter. That is my understanding of the case.

Mr. BALLARD. Mr. Chairman. My objection to this amendment is this. Suppose some emergency should arise in which the people want an amendment ratified and made perfect before the next general election, if the amendment prevails, we are tied up by Constitutional provisions that we cannot have it. Shall we tie ourselves up by Constitutional provisions to that extent that the will of the people cannot be enforced under an emergency, or leave it free for the people to say what they will have in that particular.

Mr. WAKELEY. Mr. Chairman. The very object of a constitution is to control Legislatures within certain limits. We should have no need for a Constitution if every Legislature was to be left to its own discretion in regard to what it should do. The Constitution as adopted by the people in their sovereign capacity, and the only purpose—I will not say only purpose—but one great object is to put restrictions on the power and discretion of Legislatures. If you could always elect saints or perfect men to the Legislature, leave everything to them, because this convention is not composed of that material, I speak for one member of it. A great many gentlemen in this hall have taken occasion during this convention, repeatedly to express their fears of the overshadowing power of corporations in this state, it was said yesterday that entire Legislatures were owned by corporations wholly. Suppose when these giant corporations shall own a Legislature, they have some scheme to carry in their interests, when they might want an amendment to the Constitution adopted, they might get two successive sessions of the Legislature to ratify, then say it was dangerous to submit it at a general election, and the same legislature which had proposed to sanction the amendment would submit the proposition at such time as would be most favorable to the proposed amendment. And I appeal to the experience of every delegate in this Convention, if it is not proved that those who advocate a particular measure, have an advantage in the submission of that measure at a special election. It is true, every man knows it, that those having influence to carry an amendment through the Legislature, are interested in its adoption, and that same interest will be manifested at the polls. Those who would vote against it, if they vote at all, are entirely indifferent, or have not the same zeal in opposing the amendment that those who favor it have in its adoption. This is but supposing a single case, and the reasoning will apply to all other cases.

Mr. WILSON. I move the committee rise, report progress and ask leave to sit again.

Mr. CAMPBELL. I move the adoption of the section.

Mr. WILSON. It was voted yesterday that when we adjourn today it be at eleven o'clock.

The committee divided on the motion of Mr. Wilson, and it was not agreed to.

The CHAIRMAN. The question now is on the substitute offered by the gentleman from Douglas, (Mr. Boyd.)

Mr. STRICKLAND. Mr. Chairman. Not having heard this debate I beg to be excused from voting.

No objections being made the gentleman was excused.

The substitute was agreed to.

Mr. McCANN. Mr. Chairman. I move that the committee rise, report progress and ask leave to sit again.

The committee divided and the motion was agreed to.

Mr. REYNOLDS. Mr. President. Your committee have had under consideration the report of the Committee on Future Amendments, and report progress and ask leave to sit again.

Mr. BOYD. Mr. President. I move we adjourn.

The motion was agreed to, so the committee at eleven o'clock and five minutes adjourned.

TWENTY-FIRST DAY.

Monday, July 17, 1871.

The convention met at 2 o'clock and was called to order by the president.

Prayer.

Prayer was offered by the Chaplain, as follows:

Oh, thou who art Supreme in goodness and in all wisdom. May Thy blessings, we pray Thee, rest upon us as we address ourselves to the labors of the week. May Thy will be the law of this Convention. May Thy counsels, which are faithful in truth and form, be the Spirit of our law, that the State may be preserved against all dangers that are seen, and dangers that are unseen. Amen.

Leave of Absence.

Mr. ABBOTT. Mr. President. I ask leave of absence for Mr. Lake and Mr. Manderson until tomorrow at 2 p. m.

Leave granted.

Mr. CAMPBELL. Mr. President. I ask leave of absence for Mr. Scofield.

Leave granted.

Petitions.

Mr. PARKER. Mr. Chairman. I wish to offer a communication and a petition.

The Secretary read as follows:

To the Honorable members of the Constitutional Convention of the State of Nebraska.:

We, the citizens of Seward county, pray your honorable body not to abridge the liberties of your constituents by placing an article in the State Constitution depriving counties and corporations of the right at the ballot of voting aid for internal improvements:

And further; believing the intelligence of the people ought to decide a question so momentous, we, earnestly ask the delegates of Seward county not to compel their constituents to oppose the Constitution by embodying an article in it so obnoxious to liberty.

Signed by Wm. R. Davis and seventy-three others.

Mr. PARKER. I move to refer it to the committee on Municipal Corporations.

The motion was agreed to.

Mr. MOORE. Mr. President. I desire to offer a couple of petitions.

The Secretary read as follows:

To the Honorable, The Constitutional Convention of the State of Nebraska:

We, the citizens of York county, would enter our most earnest protest against the Constitutional Convention incorporating an article in the Constitution of the State prohibiting counties and corporations from voting aid for internal improvements; believing that the ballot box, in this free and enlightened age, is a sufficient safeguard for our liberties, and we remonstrate against the monarchial and despotical principle of depriving the people of using the ballot box in any case whatever. Neither do we want our rights and liberties abridged nor curtailed.

Signed by D. R. Creegan and ninety-six others.

Mr. McCANN. I move that the petition be referred to the Committee on State, County and Municipal Indebtedness.

The motion was agreed to.

The Secretary read a petition as follows:

"To the Honorable Gentlemen composing the Constitutional Convention of the State of Nebraska:

Gentlemen: We, the undersigned citizens of York county, would respectfully ask that you engraft a clause into the Constitution which you are now framing, prohibiting any county from granting bonds for the purpose of building or assisting to build railroads in the same.

Signed by J. W. Frost and eighty-seven others.

Mr. McCANN. Mr. President. I

move it be referred to the same committee.

The motion was agreed to.

Mr. GRIGGS. Mr. President. I have a resolution I wish to offer.

The Secretary read the resolution as follows:

Resolved. That upon the discussion of any subject in the committee of the whole house, no member shall be permitted to speak more than twice upon any one subject, and not to exceed 15 minutes at any one time. Provided, that when the report of any standing committee shall be under consideration, the chairman of such committee shall be exempted from the operations of this resolution.

Mr. GRIGGS. Mr. President. I move that the resolution be adopted.

Mr. WOOLWORTH. Let me suggest to the gentleman to amend so as to cover discussions in the convention as well as in the committee of the whole.

Mr. GRIGGS. I will accept that amendment.

Mr. PHILPOTT. Mr. President. I hope the gentlemen of the convention will take notice of the resolution, so much so at least that before they vote upon it they will have it before their minds. It says that no gentleman shall speak more than twice on the same subject, nor longer than 15 minutes when in the Committee of the Whole, where it is expected matters will receive a full and careful consideration. I think that is not enough time.

Mr. GRIGGS. Mr. President. I am induced to offer this resolution because I consider more time has been taken up in these discussions than is necessary. It has been remarked by a great statesman that 15 minutes are sufficient for him, or anybody else to argue one subject, and that is all that this takes in. I am satisfied that the people don't want us to stay here wasting time on such long arguments. Every member of this convention has his mind fully made up on all important subjects, there is no need of so much speaking. I think we will get through sooner and be better satisfied with our work; and I am sure our constituents will be better satisfied.

Mr. ESTABROOK. If the resolution applied solely to the proceedings in the House I would vote for it, but it may be in the consideration of many questions we may desire more time than will be allowed by that rule. I think we had better be allowed some degree of freedom in the Committee of the Whole.

Mr. MOORE. Mr. President. I think I have a right to say what I think on this resolution as I have not taken up much time of the Convention. I am opposed to the resolution. I suppose there are some here who could speak two hours upon a subject and at the end tell more than some of the rest of us know altogether. We come here to consider the best way for providing constitutional remedies. We have to consult together, and there is no necessity that we cut off any man's speech. If we do we are cutting off from the people their rights.

Again, it gives the chairman of the committee the right to make as many speeches as he likes or as long as he chooses. I don't think that the chairman may know any more than any other member. If a rule is passed I hope it will be equal on all.

Mr. GRAY. I hope the resolution will prevail. I am heartily in favor of the principle in it. It is urged here that some gentlemen are able to speak two hours on the same subject. Well, sir, I believe these very gentlemen are able to say all that is necessary in fifteen minutes.

Any gentleman upon this floor that has the capacity of mind and memory to speak intelligently upon any subject likely to come before this house, also has the capacity to express all he has to say in fifteen minutes. A great deal of time has been spent unnecessarily, so far, in speaking. I have no desire to prevent men from saying all that is necessary to be said to express their sentiments upon any question that comes up here, but I desire that we should work by some better discipline than we have been doing so far. Take, for instance the course which the learned Chief Justice takes, when he confines counsel to fifteen minutes. He knows when they make an effort they can say all they desire to say in that time. The discipline will work well here.

The ayes and nays were demanded.

The Secretary called the roll and the President announced the resolution lost, a two-thirds vote being necessary under rule 43.

Ayes, 25; Nays, 19, as follows:

Ayes.

Abbott,
Ballard,
Eaton,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Kilburn,
McCann,
Majors,
Myers,
Boyd,
Campbell,
Parchin,
Parker,
Reynolds,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Wilson.—25

Nays.

Cassell,
Curtis,
Estabrook,
Hinman,
Kenaston,
Kirkpatrick,
Lyon,
Mason,
Moore,
Neligh,
Newsom,
Philpott,
Price,
Robinson,
Shaff,
Sprague,
Towle,
Vifquain,
Weaver,
Woolworth.—19.

Absent or not Voting.

Grenell,
Lake,
Manderson,
Maxwell,
Scofield,
Wakeley.

Mr. WILSON. Mr. President. I have found a letter upon my desk which I wish the gentlemen of this Convention to know the contents of. It is this:

Lincoln, Neb., July 15, '71.
Mr. John Wilson,

Sir:—A friend has informed me that you intend to introduce a resolution in tended to cast dishonorable reflections on me, I shall consider it in that light, and call on you to account through a friend,

Yours truly,
E. E.

I wish to say to this Convention that I am here standing in my own boots bought and paid for, and that they cannot frighten me from doing my duty. Whoever he is he is a low lived, dirty, mean, contemptible skunk, that cannot put his name to it.

Mr. GRAY. Mr. Chairman. I desire to say that the rule referred to allows the members to speak only once. This allows them to speak more than once but says they shall speak but 15 minutes at a time upon a question.

Mr. THOMAS. If the gentleman from Dodge (Mr. Gray) will permit me, I will offer as a substitute, this "No member shall speak more than 15 minutes."

The PRESIDENT. I would call the attention of the gentleman to rule 40.

Mr. THOMAS. Mr. President. This amendment which I offer, will not limit the number of times a man may speak. He can speak as often as he pleases but only fifteen minutes at a time.

Mr. GRAY. Mr. President. I will not accept the substitute, but will add to my resolution the words, "and that the rules be suspended."

Mr. CASSELL. Mr. President. I move that the matter be indefinitely postponed.

The motion was not agreed to.

The PRESIDENT. The question is upon the adoption of the substitute offered by the gentleman from Nemaha, (Mr. Thomas.)

The Convention divided and the substitute was not agreed to.

The CHAIRMAN. The question is now upon the adoption of the resolution of the gentleman from Dodge (Mr. Gray.)

Mr. KIRKPATRICK. If I understand correctly, it will require a two-thirds vote to pass this resolution?

Mr. MYERS. Mr. President. I move that the resolution be postponed until Saturday morning at 10 o'clock.

The motion was not agreed to.

Mr. ROBINSON. Mr. President. I voted against the postponement because I want to see the whole thing voted down. I don't believe there has been any disposition on the part of any member of this body, so far, to speak against time, nor delay the transaction of business. I want to see every matter fully discussed. I call for the ayes and noes.

Mr. WOOLWORTH. Mr. President. I call for the reading of the resolution again.

The Secretary read as follows:

Resolved—That no member shall speak more than twice in committee of the whole on any question, and shall not occupy more than 15 minutes each time; and no member shall speak more than thirty minutes on any question in the Convention.

Mr. PHILPOTT. Mr. President. I call for a division of the question.

Mr. GRAY. One question is to suspend the rules; the second is to a limitation of time in Committee of the whole; the 3rd, limitation of time in the Convention.

Mr. ESTABROOK. Mr. Chairman. I move that rule 40 be suspended and that time shall be limited as therein explained, so far as it applies to the Convention. I offer this as a substitute.

Mr. HASCALL. Mr. President.

We want rule 40 to stand. This would be merely a substitute for that rule. If we adopt this rule, and say nothing about rule 40, this would be all right.

Mr. SPRAGUE. Mr. Chairman. The rule laid down in Cushing's Manual—

Mr. ESTABROOK. I will state that my substitute offered, to suspend rule 40, so as to limit the two speeches of15 minutes each, in the Committee of the Whole, and speeches in the Convention to thirty minutes each.

Mr. MYERS. Mr. Chairman. I move that the rule requiring a two-thirds vote to change, alter or modify any of the rules, be suspended for the purpose of considering the resolution offered by the gentleman from Douglas (Mr. Estabrook.)

The ayes and nays were demanded.

The Secretary proceeded to call the roll.

Mr. CURTIS. (when his name was called) Mr. President. I desire to be excused from voting.

Mr. Curtis was excused.

The President announced the result—Ayes, 26; nays, 16—as follows:

Ayes.

Abbott,
Ballard,
Boyd,
Campbell,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kilburn,
Ley,
McCann,
Moore,
Myers,
Newsom,
Reynolds,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Woolworth.—26

Nays.

Cassell,
Kenaston,
Kirkpatrick,
Majors,
Neligh,
Parker,
Philpott,
Price,
Robinson,
Shaff,
Sprague,
Towle,
Vifquain,
Weaver,
Wilson,.—16.

Absent and Not Voting.

Curtis,
Grenell,
Lake,
Manderson
Mason,
Maxwell,
Parchin,
Scofield,
Wakeley,
Mr. President.—10

Mr. ESTABROOK. Mr. President. I rise to a question of privilege. I would like to inquire of the gentleman from Johnson, (Mr. Wilson) as I see the letter which he read here bears the initials "E. E.," which may mean Experience Estabrook, if he thinks I am the author of that letter?

Mr. WILSON. Whoever the shoe will fit can put it on.

Mr. ESTABROOK. I want it understood that I wear No. 11's, (laughter) and I think this is a sort of child's shoe. Those here who are acquainted with my manner of correspondence and style of writing know that I write my name to my letters in plain hand and sometimes indulge in the style of John Hancock. If the gentleman ever receives a comunication from me it will be signed in unmistakable letters and if it is necessary I will get the Secretary to affix the great seal of the state.

Mr. HASCALL. Mr. President. I move that we do now go into the Committee of the Whole on the Executive Article.

The motion was agreed to.

So the Convention in the Committee of the Whole—Mr. Myers in the chair—proceeded to consider the report of the Committee on Executive.

The CHAIRMAN. When the committee rose the question was on the amendment of the gentleman from Douglas, (Mr. Hascall) to add to section 9, as follows: "But no general session of the Legislature shall be so adjourned by the Governor until 20 days after the commencement of the regular session."

Mr. HASCALL. Mr. Chairman. This subject has been thoroughly considered in the former discussion, but some members may have been absent at that time and not understand the reasons for the amendment. I will simply state, it is for the purpose of prohibiting the exercise of this proroguing power at least 20 days.

Mr. WOOLWORTH. Mr. Chairman. In the discussion had before, it was pretty generally drawn out that the question was the disagreement of the two Houses of the Legislature on the time of adjournment. I wish to call the attention of the gentlemen of the Committee to that fact, and read the section as it stands.

Sec. 9. In case of a disagreement between the two houses with respect to the time of adjournment, the governor may, on the same being certified to him by the house first moving the adjournment, adjourn the general assembly to such time as he thinks proper, not beyond the first day of the next general session.

The disagreement of the two houses as to what? "the time of adjournment." Now it was urged here the other day that it was important that there should be a provision added to this section, that the Governor should not exercise this power until the Legislature had been in sesion for a period of 40 days and was afterwards put at not to exceed 20 days; and why? It was urged that the governor might prorogue the Legislature under this section, before it had done any business at all, but I do not see how such an exigency could arise. If the two houses agreed upon an adjournment, but a disagreement exists as to the time, then the power of proroguing shall be had. So that you see that one branch of the Legislature shall not have the power to procure an adjournment.

Mr. ROBINSON. Is this the time at which, or the time to which the adjournment shall take place.

Mr. WOOLWORTH. The time at which, as it states the "time of adjournment."

Mr. ROBINSON. Read the last part of the section, it says "to which."

Mr. WOOLWORTH. That applies to the power to be exercised by the governor, that when he has the power to prorogue the Legislature, he may adjourn it "to such time as he thinks proper."

Mr. HASCALL. Mr. Chairman. So far as this section relating to time is concerned I agree with the gentleman, and by agreeing with him I see no reason why this amendment should not prevail. If there is any disagreement between the two houses, it is as to the time when they adjourn. I understand the section relates to the time when the Legislature shall adjourn. This disagreement arose by a concurrent resolution being introduced and passed in one body and sent to the other who refuses to pass it. Then the governor may prorogue the Legislature and fix the time to which it stands adjourned. There is no necessity for this power. If there is, it is after the Legislature has been in session the constitutional time. After that time they shall remain without pay. That is one of the modes adopted to compel the two houses to agree upon a time when they will adjourn. I say this question ought not to rise in the Legislature, so the governor could step in and adjourn the Legislature to any particular time, unless twenty days of the regular session had already elapsed. We are making laws to meet the requirements of cases as they arise. Unless twenty days of the session has elapsed, there is no justice in allowing an executive to step in and dissolve that session by adjourning it to a period so remote that that Legislative body could have no time to transact business. So long as one body of the Legislature deem it necessary to remain in session for a longer period, it might be to investigate the official acts of an officer, and that the other body being in accord with the executive, wishing to smother matters that the State should be made aware of, would move and put through a concurrent resolution to adjourn the session; the other body refused to pass it, there is a disagreement, and the Executive comes in and terminates the session contrary to the will of the Senate or the House. I think it is wrong in principle that the governor should step in and dissolve a general session of the Legislature before twenty days of that session had elapsed.

Mr. TOWLE. It seems to me Mr. Chairman, that the section referred to the committee is as near perfect as we can make it, and that the amendment should not be adopted. I do not believe it can be supposed that either one of the bodies of the different houses will pass a joint resolution as to what time they will adjourn until they are ready to adjourn. The gentleman in support of his position quotes a supposed case, that if one of the bodies desires to investigate and the other body does not, why they have a power by disagreement, for the governor to come in and prorogue them, thereby thwarting an investigation that would injure his reputation. If one of those bodies desires to investigate the governor's action; or any other department, they need not fix upon a time for adjournment. if they do not there will be no disagreement between the two houses, and the Governor would have no power to prorogue.

Mr. KIRKPATRICK. Mr. Chairman. I do not agree with the gentleman from Douglas in his remark.s. He claims there can be no disagreement except upon time. That is all there is of it. The question resolves itself into this, we elect members of the Legislature to enact laws. The executive is a different branch. He is charged with the enforcement of those laws, in accordance with the provisions provided for by the Legislature. I believe it would be better to leave the whole matter to the Legislature to control its own sittings, but I am willing to accept this amendment.

Mr. MAJORS. I do not propose to say but very little upon this question as it appears to me the article, as reported by the committee, in itself, is right, and needs no amendment. I am one who does not believe in this convention putting anything into the Constitution that will interfere with the action of the representatives of the people upon a question of this kind. Now, the gentleman's argument is that the power may be used after twenty days. If there is a disagreement as between the two branches of the Legislature at an earlier period of the session within twenty days the Governor has no power to go in and adjourn the Legislature. My opinion is, and I shall vote for the article presented by the committee, in that view of the case, that this is a matter that should be entirely left to the Legislature at the time. And if one branch of the Legislature desired to adjourn, and the other branch did not concur they were forced under the Constitution to stay the twenty days, that would serve the interests of the people but very poorly for the twenty days. I am in favor, therefore, of the article as reported by the committee and shall vote to sustain it.

Mr. ROBINSON. I hope this amendment will not prevail. I take it that the officer who is elected by the people, is, in some measure, the servant of the people, even though he be the Executive officer. Now it has been supposed that the Executive could defeat the will of the people and both branches of the Legislature. Now, I think he can only act upon the precise conditions as laid down in this section. I take it that if the will of the people is bound to be thwarted it might be done by one branch of the Legislature as well as the other. If one branch moves an adjournment, and the other disagrees, the house first reporting may report to the governor and has as much right as the other house. If either branch of the Legislature desires to disregard the Constitution we can make no instrument to prevent them, and some responsibility ought to be imposed upon the Executive as well as upon the Legislature. It must first be made known to him officially.

Mr. ESTABROOK. I am in favor of paying regard to the old usages, traveling in the old paths unless there has been something which has shown that course to be wrong. There have been some emergencies we have met here during the last session, which might be corrected, to a certain extent in the preparation of this article. It is usual, I believe, after the commencement of a session fairly, and some times during its progress, according to my recollection and experience, that one branch will offer a resolution to adjourn on a given day; and they will generally couple with that resolution another, that after a certain day no new business shall be introduced. Suppose this house pass a resolution ten days before they intend to adjourn and they not exactly concurring, then should refuse to concur, and this body should notify the governor, and acting in conjunction with them, he should say this body shall be adjourned to-morrow. What is to hinder him? There is nothing. It seems to me some safeguard similar to the one offered should be adopted. Perhaps that would not be it exactly. I would propose I think, that provision should be made that the prorogation should not be made until application had been made for several days. I shall vote with my colleague.

Mr. THOMAS. I am in favor of the section as it stands now. It seems to me there is no necessity for the amendment which has been proposed. I understand from this section, that the Governor may not adjourn until there has been a disagreement as to the time of adjournment. Suppose the senate passed a resolution to adjourn at a certain time, the resolution is sent to the house which amends the resolution by fixing the time on a different day; it is sent back to the senate, which refuses to concur in the amendment. Notice is given the House. The House refuses to recede; there are no committees of conference appointed. Nothing more can be done. They are not able to adjourn at all. Now, it seems to me that in such a case as this the section is right. Now, I can see no reason why the legislature should wait twenty days; they have agreed; they are willing to adjourn, but cannot fix upon a time, and it seems to me when they get into such a position as that the Governor should be authorized to step in and adjourn without waiting a period of twenty days. They have got through with their business in one house; the other may wish to keep the legislature here longer. One house may have made up their minds that they will not transact any more business; and why keep a body in session twenty days when they have declared they will not do any more work. I am opposed to the amendment as offered.

Mr. HASCALL. I am glad that the sophistry and covering has been stripped off this question, and that it appears in its true light—that the Senate and Executive if they desire to adjourn the legislature, may do so without the sanction of the house. The last gentleman asks the question why keep the legislature in session twenty days after seeming to make it apply to a twenty days' session, after they fail to agree. But that is not the case at all, because this amendment supposes that the only emergency in which the executive can step in shall not arrive until twenty days after the commencement of the session. The question arises whenever the two branches fail to agree. Now, when the legislature comes in session for the purpose of doing business some time should elapse unless both branches are willing to adjourn, before an adjournment can take place. And twenty days is not too much. And the House of representatives is supposed to be the direct representative of the people; more so than the senate; because they are more numerous and come usually from the smaller districts, and it is proposed here, I believe, that they shall be elected annually, and the Senators hold for a longer period of time, and only part go out at the same time.

Now suppose that the senate should form a coalition with the executive and shirk the responsibilities laid upon them. They let an emergency arise and, as the gentleman from Cass suggests, this notice is a mere matter of form. This having been gone through with, the Governor can prorogue the legislature. This power should not be exercised unless both houses are willing to adjourn or have been in session some definite time.

The CHAIRMAN. The question is on the amendment of the gentleman from Douglas (Mr. Hascall).

The committee divided, and the amendment was not agreed to.

Mr. ESTABROOK. Mr. Chairman. I move to amend by adding to the section the words "the Governor may also adjourn the legislature in case either body remains in session twenty days without a quorum."

I offer that in view of the facts that took place here at the last legislature when this house was left several days without a quorum, and could not adjourn and in fact the House of Representatives is in session today , never having legally adjourned.

Mr. HINMAN. I would like to ask the gentleman, how long that was the case.

Mr. ESTABROOK. I can not say, but I know the adjournment was without a quorum, and I think there were some important bills passed.

Mr. HASCALL. The gentleman is certainly mistaken.

Mr. CAMPBELL. Mr. Chairman. I move to amend by inserting ten days instead of twenty.

Mr. ESTABROOK. I accept the amendment.

Mr. WOOLWORTH. Mr. Chairman. I am not familiar with the case referred to by the gentleman from Douglas (Mr. Estabrook) but I know sir, some years ago there was a dispute arose in the legislature of the state of New York about the management of the canals, and the democrats resigned their seats so that there was not a quorum, and the legislature was adjourned sine die, and if I recollect right something of the same kind occurred in the state of Indiana. It may be the democrats did this last thing.

Mr. ESTABROOK. I don't think it was.

The CHAIRMAN. The gentlemen must not engage in private conversation. The Chairman cannot hear, and the reporters cannot get it.

Mr. WOOLWORTH. It is not of the least importance that the reporters should get it.

Mr. MAJORS. Mr. Chairman. I was present during the last hours of the last session of the legislature, and I will simply say that all there was of this matter referred to was

I made a motion myself for the roll to be called, and I was told that there was a little business in the Senate to be reported back to the House. It had been acted on in the House and it was said if the roll was called the Chairman could not sign it, and it was only for that, that the roll was not called.

Mr. THOMAS. How many days were you without a quorum?

Mr. MAJORS. Only the last day. We had a quorum the last day. So far as this amendment is concerned I don't think it would correct anything. I am willing to trust this matter to the legislators as they come up here fresh from the people.

Mr. TOWLE. Mr. Chairman. The object of the amendment is to prevent bills from being passed when there is not a legal quorum present, or in other words to provide against the recurrence of such a thing as the gentleman says took place here in the last legislature. Now, the amendment does not cure this; it only limits it to ten days. But, sir, there is no need of this. The constitution expressly says that you cannot pass any bills unless you have a quorum, but may adjourn from day to day and send for the absent members.

Mr. ESTABROOK. I would like to ask the gentleman if signing a bill is not a lawful act; and can the legislature adjourn under the law sine die without a quorum?

Mr. TOWLE. Mr. Chairman. There must, beyond question, be some power which will dissolve the legislature when there is no quorum, and there can be no business done. As far as the constitutionality is concerned there is a certain course through which a law must pass. If the journal of the legislature shows that the law is not passed, then, of course, it is not a law.

Mr. BALLARD. Mr. Chairman. As a member of the committee that reported this section, perhaps I will be allowed to make a remark. Our sister states have lived and prospered under the same provisions, for many years.

Mr. GRIGGS. Mr. Chairman. I understand the question to be upon giving the governor power to dissolve the legislature whenever they hold a session ten days after there shall have been a quorum present. Suppose, for instance, that the legislature adjourns. The members don't resign, as they did in the case in Indiana, just cited. Our last legislature did not resign, but they had no quorum present, and could not adjourn sine die—what could they do? I think there should be some power vested in the governor to adjourn, after a sufficient time has passed, and there is no quorum present, unless there is some such power vested in the governor there could be no way of adjourning unless there is a quorum present. The mere fact of the legislature going home—that is not adjourning. I don't believe the cases cited, touch the case in point.

Mr. ROBINSON. Mr. Chairman. I think myself that the case cited in which there was a resignation of the members, so that there was not a quorum present in the legislature, is not like the case in point. But the legislature has power to send the sergeant-at-arms and secure the attendance of members.

Mr. ESTABROOK. Mr. Chairman. In case the members of the legislature saw fit to go away to avoid adjourning, they would put themselves beyond the reach of the sergeant-at-arms. It seems as though this power to adjourn in these cases, should be vested somewhere; and I think the executive is the best place.

Mr. WOOLWORTH. Mr. Chairman. I will not detain the committee but a single moment. After hearing what has been said, my mind is clearer upon this subject and I don't think the amendment should prevail at all. I think the remedy for the cases suggested by my colleague (Mr. Estabrook) has just been stated by the gentleman from Lancaster (Mr. Robinson). I think the legislature has power to compel the attendance of members. I think the suggestion of the gentleman from Douglas (Mr. Estabrook)—the last suggestion that he made, is one so improbable—almost so impossible that it does not call for a remedy. It is not for such improbable cases, that we are to make provision.

Mr. HASCALL. Mr. Chairman. Just such things are occuring every year, I think they occur in Nebraska. Members of the state senate have attempted to break up the senate. It is true they came back afterwards, when they found they could not destroy a quorum. It is true that the gentleman can find no precedent in some old constitutions for this. Suppose we have power to compel the attendance of members of the legislature; they cannot always be reached by the seargeant-at-arms— If there is not a quorum in attendance for ten days, the governor should have power to adjourn the legislature.

The CHAIRMAN. The question is upon the amendment.

The amendment was not agreed to.

Mr. WOOLWORTH. Mr. Chairman. There is a typographical error in the printing of this section which ought to be corrected.

Mr. ESTABROOK. The committee on revision and adjustment will no doubt attend to that.

Section nine was adopted.

The Chairman read section ten as follows:

Sec. 10. The governor shall nominate and, by and with the advice and consent of the senate, (a majority of all the senators elected concurring, by yeas and nays) appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for; and no such officer shall be appointed or elected by the general assembly.

Mr. BALLARD. Mr. Chairman. I move its adoption.

The motion was agreed to.

The Chairman read section eleven as follows:

Sec. 11. In case of a vacancy, during the recess of the senate, in any office which is not elective, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office; and any person so nominated who is confirmed by the senate (a majority of all the senators elected concurring, by yeas and nays) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at the request of the senate, or be appointed to the same office during the recess of the general assembly.

Mr. KILBURN. I move the adoption of the section.

The motion was agreed to.

The Chairman read section twelve as follows:

Sec. 12. The governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, or malfeasance in office; and he may declare his office vacant, and fill the same as herein provided in other cases of vacancy.

Mr. GRIGGS. I move its adoption.

The motion was agreed to.

The chairman read section thirteen as follows:

Sec. 13. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Upon conviction for treason he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature may either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the reprieve, commutation or pardon. In cases of conviction upon impeachment, the Legislature may remit so much of the sentence as shall disqualify the convicted person from holding office.

Mr. HASCALL. Mr. Chairman. I move to strike out the following words in fourth line, "relative to the manner of applying for pardons." The reason is, this pardoning power is subject to great abuse, and is made a matter of bargain and sale in a great many states. It is a power that should be under the regulation of the Legislature, and they should make such wholesome restrictions, not only as to the manner of applying but other matters connected with the subject, and by striking out this clause the object is accomplished. It is not a new thing to hear of governors receiving money as consideration for pardoning criminals. I think we should look after the matter a little.

Mr. WOOLWORTH. Mr. Chairman. I am constrained to oppose the amendment. If you leave the legislature to regulate the matter of pardons in every respect, you virtually invest the pardoning power with them.

Now, this matter of pardoning was naturally considered in the committee. The mischief to which the pardoning power may be used was considered and an effort was made to find some other mode of exercising this power; some other department of government, but the committee were unable to define any department of the government, where this power could be vested as well as in the executive, and I think gentlemen in this convention will tax their brains in vain to find any place other than the executive to entrust this power of pardoning criminals. I suppose it is very well understood that this article is adapted almost entirely from the Illinois constitution; but if the members of the convention will look at the Illinois constitution in this particular they will find that the committee have restricted the pardoning power very much beyond what the Illinois constitution did, very much indeed. I certainly hope that this amendment will not prevail.

The amendment was not agreed to.

Mr. ROBINSON. Mr. Chairman. I move to insert after the word "impeachment" the words "and misdemeanors not punishable by impeachment, when the fine does not exceed one hundred dollars."

Mr. TOWLE. Mr. Chairman. The power granting reprieves and commutations is given to the Executive office for the reason that some injustice may have been done; that some wrong may have been committed, that some new evidence may have been discovered, which, by the usual course of procedure in our courts and criminal jurisdiction, is not liable to get a new trial. If we start out upon the assumption that it is right in any instance, in any particular, to grant the Executive of the state the power to pardon, we cannot limit it by fines, nor by dollars and cents, we cannot limit it by the amount of imprisonment, because even upon the most heinous crimes, or the crimes which society fixed the most stigma to, ought to be pardoned, if deemed innocent, as well as an offender for a slight crime. If there is such a thing existing in the world as a principle, it behooves every member of the commonwealth to stand as strongly and firmly for that principle, as much if one dollar is concerned as if a man's life or reputation is at stake.

The highest court known in the state is the court which tries for impeachment. Again treason is exempt because it is one of the highest crimes of the law. But there is no provision for reporting these smaller crimes to the legislature. There is no method whatever of reaching it, if a party should have been proved to be innocent or convicted wrongfully, and releasing him from that confinement. It is wrong, and should be entirely extinguished.

Mr. THOMAS. It seems to my mind very evident that this amendment should prevail. Suppose, in a criminal or misdemeanor case it should be discovered the person is nnocent, some one should be appointed to pardon, and I do not think any better place to invest the power can be found than in the Executive. It seems to me no exception of this kind should be inserted in this section.

Mr. ROBINSON. I am not altogether positive that this amendment should prevail. I offered it because it covered some cases coming within my actual experience. I know there are cases where the offense is liable to a fine and that fine does not exceed one hundred dollars, when it is easy for a person to get a petition with a large number of signatures. If the Executive has the power, why it always strikes him that if he has that power, say in a case of murder, where a large number sign, if he grants a pardon in one case he ought also in another. It is provided that the party aggrieved shall have the right to appeal. He is heard by a jury the second time, and I think he ought to rest satisfied when the jury has in two instances, found him guilty. I do not think where the fine is $20 or $25 a petition ought to be entertained.

Mr. THOMAS. I have known cases where the judge of the court in which a person was convicted of misdemeanor has become convinced that the party was innocent, and would be called to release the person and pardon him; and all he could do was to petition the Governor to pardon. And if we take away this power from the governor how can the pardoning be effected? It seems to me there should be no limit upon the power of the Executive in this case. It is true he may pardon people who ought not to be, but we must be depend upon his honestly fulfilling his duties as Governor.

Mr. HASCALL. There is no remedy for this pardoning power. As the section now stands we have to submit to it. If you want an order to correct an Executive you must do it by law.

Mr. MOORE. Mr. Chairman. I always was averse to doing anything, or having anything done, beyond which there can be no redress. That old law of the Medes and Persians never took very well with me. Some things ought to be pretty well fastened down so that idle hands cannot dally with them. But I think everything will be well cared for when the proper redress is left where it should be with the people. I know mistakes have been made by our courts of justice, and men have been convicted of misdemeanors and crimes greater or smaller, who it was afterwards discovered were innocent. Now in order that mistakes may be corrected and justice be finally rendered it is necessary that some power be introduced to correct evils of this nature.

We have, in our system of government, the three great powers, executive, legislative and judicial, so independent of each other that one cannot materially affect the other; and yet so interwoven that neither one is perfect without the other. It is true the judiciary should act with caution, weighing well every word spoken, yet after all mistakes will sometimes occur. Now, I think this provision in the Constitution comes just where it ought. Let the governor have the power of reprieving; let him redress, so far as he is able the various grievances when they are submitted to him. It is argued that he may be too liberal with his pardoning powers. They have, probably, been too liberal, and may again, but it is better that ninety-nine be pardoned than that one should be punished unjustly. I think the Governor is responsible to the people, for a too liberal use of this power, and the people will ever hold not only him but all other state officers responsible for the manner in which they execute the public trust. If the power entrusted to them by the people be abused, but few of them will ever return to repeat former blunders—for them.

The motion to amend was agreed to.

Mr. STEVENSON. Mr. Chairman. I have an amendment to offer to section thirteen—to strike out all after the word "upon" in the second line down to the word "upon" in the fourth line, and insert in lieu thereof "upon petition of the judge, district attorney and two-thirds of the jury before whom the case was tried."

Mr. ESTABROOK. Mr. Chairman. I would like to enquire what would be done in case the party was convicted and sentenced for life, and after he had served about twenty-five years, and the jury and judge were all found to be dead, and the man was found to be innocent, how would he be pardoned.

Mr. STEVENSON. I suppose the man would be in a pretty hard fix, if such a thing should happen. But it is hardly to be supposed that a man should lie in prison for twenty-five years before a petition for his pardon would be gotten up. I think there is entirely too much power vested in the Governor—that where parties are placed in the penitentiary sometimes petitions are gotten up and parties sign when they do not know anything about the case, and that petition goes to the Governor; he must pay some regard to it. But when the petition is gotten up by the judge before whom the case was tried, and the district attorney and the jury, then there must be some reason for believing and knowing that something has transpired which convinces them that the person ought not to be kept in prison. Therefore, for that reason I think the amendment ought to prevail.

Section thirteen was adopted.

The Chairman read section 14 as follows:

Sec. 14. The Governor shall be commander-in-chief of the military and naval forces of the state (except when they shall be called into the service of the United States); and may call out the same to execute the laws, suppress insurrections, and repel invasions.

Section 14 was adopted.

The Chairman read Section 15 as follows:

Sec. 15. The executive officers named in this article, and the judges of the supreme and district courts shall be liable to impeachment for any misdemeanor in office.

Mr. ESTABROOK. Mr. Chairman. I move it be amended so as to embrace, judges of county courts, the amendment to come in after the word "courts."

One of the most important cases ever recorded upon the criminal records was tried by a judge of probate in Massachusetts, in which case Daniel Webster officiated as an attorney. The judges of the county courts should be subject to impeachment.

Mr. CAMPBELL. That would be like shooting snow-birds with cannon. (Laughter.)

Mr. STEVENSON. Mr. Chairman. I think if the judiciary article is adopted, as proposed, then these county court judges are of more importance than the gentleman from Otoe (Mr. Campbell) seems to think, for if that article is adopted, they have jurisdiction over civil matters to the amount of $500, besides the probate business, and I think that when they are wilfully corrupt we should be able to deal with them with extreme measures, the same as against the governor and the judges of the supreme court.

Mr. ESTABROOK. Mr. Chairman. I move that this section of the Illinois constitution be adopted.

'The Governor, and all civil officers of this state, shall be liable to impeachment for any misdemeanor in office.'

Mr. STRICKLAND. Mr. Chairman. I think this will save a good deal of expense, and a good deal of trouble. We have had one impeachment trial, and it is found to be a very expensive proceeding.

Mr. ESTABROOK. Mr. Chairman. These judges of county courts are officers who hold more important positions, than those held by the District judges, although the amount over which they have jurisdiction, in dollars and cents, is not as great. I think the functions of these courts are more important than the functions of the District court, they have to deal with the estates and property of children. The idea that this body —the Legislature is always to be engaged in impeachment cases, is far fetched, because it is only in rare cases that the impeachment tribunal is invoked—only in cases of manifest fraud and misdemeanor. Perhaps it is worth consideration, whether—in case of the impeachment of other officers, you shall not confer the power of jurisdiction, say upon the Supreme court. Wherever this power is placed, it strikes me these officers should be included, as much as officers of the higher courts.

Mr. MASON. Mr. Chairman. I concur with the gentleman who last addressed the committee that these officers should be subject to impeachment; but the question here presents itself as to where this power of impeachment should be vested.

The trial of county judges and other county officers should be provided for by some other body recognized by law. I think the executive officers named in the article and the judges of the Supreme and District courts are the only ones over which the Senate should have exclusive jurisdiction. Why? Because the Supreme Court is the very dernier resort for appeals, and it is only before the Senate that such can be tried, but all other officers can as well be tried before some of these tribunals as well as by the Senate. Your county officials should have a more speedy trial than by the Senate.

Mr. ESTABROOK. This section does not say they shall be tried by the senate. It says simply "The Governor, and all civil officers shall be liable to impeachment for any misdemeanor in office." It is simply declaratory of what officers may be subject to impeachment.

Mr. MASON. If that is the case I

think the amendment is correct. I apprehend that the committee in reporting this section meant to say only what officers shall be tried before the senate. State officers only should be tried by the Senate, all others should be tried before courts of law.

Mr. ESTABROOK. I need not state to the Chief Justice the maxim of law "that some officers being named all others are excluded." I only propose to change it so that all officers shall be included, and then in your Legislative article you may determine how the different officers shall be tried.

Mr. THOMAS. Does the gentleman think that refers to the trial by the Senate only?

Mr. ESTABROOK. No, sir, I do not.

Mr. MASON. By permission of the gentleman, I desire to ask the chairman of this committee on executive (Mr. Woolworth) a question.

Mr. ESTABROOK. Certainly, sir.

Mr. MASON. This article expresses just who shall be tried by the Senate?

Mr. WOOLWORTH. Yes, sir.

Mr. MASON. Does it apply to all officers that may be impeached?

Mr. WOOLWORTH. No sir.

Mr. THOMAS. I would ask the gentleman how he would remove the superintendent of public instruction?

Mr. WOOLWORTH. As we would remove any of the other officers named in this article. The section on this subject in the Legislative article I suppose will be the same as that in the Illinois constitution. "The House of Representatives shall have the sole power of impeachment," or as you have it in the Federal constitution. "The Senate shall have the sole power to try all impeachments."

Mr. ESTABROOK. I wish the gentleman would read another section at the end of Article II.

Mr. WOOLWORTH. The gentleman refers me to another section which I don't think refers to this, but I will read it. "The president, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors."

Certainly there could be but very few exceptions to that. The Senate is vested with the sole power of impeachment. Does the Senate of the United States try a subordinate officer? Not at all. The receiving of public moneys for malfeasance in office is a crime under the criminal laws to be tried by the courts. The same may be said of a great many other civil officers of the United States, they are not tried for malfeasance in office by the Senate at all. They are not impeached by the House of Representatives. Now I call the attention of the committee to this circumstance for the purpose of showing that this trial of impeachment is used in the article of the Federal constitution to which I have directed attention, and the other state constitutions refer to a certain specific kind of State trial, and not to the sort of trial that has been adverted to by the Chief Justice in respect to sheriffs and county officers. This remedy by impeachment was given to us by the founders of the Federal constitution from the practice as it obtained in England, where the Commons impeached not only officers of the executive government and judicial government, but even citizens holding exalted rank in the country. The Commons impeached them by adopting articles, those articles were carried up to the Lords and tried before them, although the charge made against these persons might be anything but an offence against the criminal law, and not be for malfeasance in office. All that was sought to be controlled when the Federal constitution was drafted, and that is the kind of trial referred to by this constitution. It always means when technically used, a trial by the Senate. State senates are vested with a like power to try impeachments presented to them by the House of Representatives in State Legislatures. I make these remarks in explanation merely to show that when you vest the sole power to try impeachments in the Senate, you do not take away from a proper tribunal the power to impeach and try county officers, which is the particular matter the Chief Justice directed my attention to. You may call it impeachment and it is quasi but technically it is not. As I stated before, the article is almost entirely taken from the Illinois constitution, but in this fifteenth section we thought there might be a liability to doubt as to what persons were included under the names of state officers, and that it would be more specific to say "executive officers named in this article should be liable to impeachment." If you will turn back to the first section you will see just exactly who those state officers are, it says:

> "The executive department shall consist of a Govenor, Lieutenant-Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction and Attorney General.

Those, then, are the executive officers, and they alone ought to be subjected to this trial by impeachment, others to the judgment of the court. And we think that the language used is better than the language used in the Illinois constitution, because it avoids all the doubt that might possibly be raised upon the question as to who are the civil officers of the state. They are only those named in the first section.

Mr. ESTABROOK. Can you impeach the Superintendent of Public Instruction?

Mr. WOOLWORTH. We can impeach any executive officer named in this article. He is one of the officers of the executive department.

If the Legislature shall create other State officers, and this clause stands as it is now, they will not be liable to impeachment, because it is limited to those here named. It was the view of a majority of the committee that the officers named in this article, six active officers, were enough to transact the business of this state, and do it pretty well.

Mr. THOMAS. Mr. Chairman. I am in favor of the amendment offered by the gentleman from Douglas. I believe all State officers should be liable to impeachment before the Senate. I believe county officers should be removed from office, or a complaint made before a proper tribunal, whatever may be provided by the Legislature.

I understand the words "civil officers of this state" in the Illinois constitution are used in contradistinction to county officers and officers of the military department. It is made to cover all State officers. Whatever officers should be state officers should be removed by impeachment before the Senate. For this reason, it seems to me that the section, as it exists in the constitution of Illinois, is proper. It may be true that the section here provided for would cover all the officers mentioned but we are not certain it will do so. And for these reasons I am in favor of putting in "all civil officers of the State." I do not know how else the officers should be removed or before what tribunal.

Mr. STRICKLAND. The gentleman from Nemaha has just struck the key to this question. "The Executive officers named in this article, and the judges of the Supreme and District courts, and all other civil officers of the state shall be liable to impeachment for any misdemeanor in office." There must be a manifest propriety in these State officers, who are officers of dignity, that they should have on trial all matters and concerns of state, which are above those of counties. Every single county officer is liable to be arrested, tried, punished and removed. The amendment offered by my friend, Gen. Estabrook, takes too broad a scope. When you get down to policemen we have no trouble in our county about them, or county officers. You will see the meaning of this. Not State officers, but all officers are civil officers of the state. A justice of the peace or a constable, sheriff or county commissioner, or a notary public are civil officers in the state, but they are not State officers. There is the difference. One is a State officer, representing the interests of the state, and the other only represents say, a county or township.

Mr. ESTABROOK. Don't you use the same term in civil officers of the state?"

Mr. STRICKLAND. No, sir.

Mr. MASON. After a careful examination of the question, I am in favor of the amendment offered by Gen. Estabrook. The only difference between the suggestion made by Mr. President (Mr. Strickland) and Gen. Estabrook is—The General reads "and all civil officers of this state," and Mr. President reads "all civil officers of the state." The difference between "this" and "the."

Mr. STRICKLAND. I will state I am wrong in respect to this word.

Mr. MASON. I think all state officers ought to be subject to impeachment. There may be others created by the Legislature than those for which this Constitution provides.

The Amendment of Mr. Estabrook was adopted.

The section as amended was

agreed to.

The Chairman read section 16 as follows:

The sixteenth section was adopted.

Sec. 16. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If, then, two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. But in all such cases, the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned to the governor within five days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the general assembly shall by their adjournment, prevent its return; in which case it shall be filed, with his objections, in the office of the secretary of state, within five days after such adjournment, or become a law.

The Chairman read section 17 as follows:

Sec. 17. In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant-governor.

The CHAIRMAN. —Section 17 is before the committee.

Mr. ESTABROOK. I would ask the Chairman of the committee what he intends by the words 'conviction or" in the first line?

Mr. WOOLWORTH. It should read "on" instead of "or."

The section was so amended and then adopted.

The Chairman read the 18th section as follows:

Sec. 18. The lieutenant-governor shall be president of the senate, and shall vote only when the senate is equally divided. The senate shall choose a president pro tem, to preside in case of the absence or impeachment of the lieutenant governor, or when he shall hold the office of governor.

Section eighteen was adopted.

The Chairman read the next section as follows:

Sec. 19. If there be no lieutenant-governor, of if the lieutenant-govenor shall for any of the causes specified in Sec. 17 of this article, become incapable of performing the duties of the office, the president of the senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of representatives.

Mr. MASON. I desire to call attention to the fact that the lieutenant-governor would act as governor in case of the absence of the governor, if he was under impeachment—that is if the articles of impeachment were preferred against him; also that he would still preside in the senate after the articles of impeachment were presented against him.

As the 17th has been, and the 19th

is likely to be adopted, then some one else should preside, for while he is on trial he exercises all the functions.

Mr. ESTABROOK.—If the gentleman will move to strike out the words "conviction" it will do.

Mr. WOOLWORTH.—I must move to reconsider.

Mr. MASON. If the committee desires to suspend the functions of the lieutenant-governor, and if the articles have been preferred then the article should stand.

Mr. KIRKPATRICK. If I read it right I think the gentleman is mistaken. The 17th section reads—"In case of death, convicition on impeachment, etc."

Mr. MASON. Let me suggest that it read "conviction or impeachment" instead of "conviction on impeachment." If that is the sense of the committee I am not tenacious enough about it to press it.

Mr. KIRKPATRICK. The chairman of the committee I understood to say that impeachment was to disqualify, when we proposed this article.

Mr. LAKE. Mr. Chairman. I think it would be well to reconsider the vote by which Sec. 17 was adopted. We should strike out the words "conviction or." I move that we reconsider that vote.

The CHAIRMAN. The chair is of the opinion that we cannot reconsider in committee of the whole. The committee is bound by its books.

Mr. THOMAS. Mr. Chairman. This was adopted very hastily. Some of the members would like to reconsider and it seems very strange if we cannot.

Adjournment.

Mr. CASSELL. Mr. Chairman. I move that the committee do now rise and report progress, and ask leave to sit again at 9 o'clock tomorrow morning.

Mr. WOOLWORTH. Mr. Chairman. I hope the gentleman will withdraw his motion for five minutes.

Mr. CASSELL. I withdraw the motion.

Mr. NEWSOM. Mr. Chairman. The 18th section—

Mr. ESTABROOK. Will the gentleman let me call him to order—

The CHAIRMAN. We are not now considering the 18th, but the 19th section.

Mr. MASON. Mr. Chairman. In considering the propriety of adopting the 19th section I think it is necessary to refer to Sec. 18. for that reason I think the gentleman is in order. When we were considering Sec. 18, I quoted from the 17th section, I submit this is proper. Sec. 17 and 18, they being referred to in Sec 19.

Mr. HASCALL. Mr. Chairman. The entire matter under debate will be made harmonious by the adoption of the amendment of the gentleman from Douglas, (Mr. Woolworth) which is to strike out the words "conviction on."

Mr. CASSELL. Mr. Chairman. I renew my motion that the committee rise.

The motion was agreed to.

Mr. MYERS. Mr. President. The committee of the whole, have had under consideration the report of the judiciary committee, and beg leave to report progress, and ask leave to sit again.

Leave of Absence.

Mr. LEY. Mr. President. I ask leave of absence until Thursday noon.

Leave granted.

Mr. MYERS. Mr. President. I move that the request of the committee of the whole be granted, and that they be allowed leave to sit again tomorrow morning at nine o'clock.

Motion agreed to.

Mr. NEWSOM. Mr. Chairman. I move that the convention now adjourn until tonight at 8 o'clock.

Mr. HASCALL. Mr. Chairman. I rise to a point of order.

Mr. NEWSOM. The only object I had in making this motion to meet this evening was to see if the members are willing to meet at night.

Mr. MYERS. Mr. President. I move we adjourn until 9 o'clock tomorrow morning.

Motion agreed to. So the convention adjourned.

TWENTY-SECOND DAY.

Tuesday, July 18, 1871.

The committee met at 9 o'clock a. m., and was called to order by the President.

Prayer.

Prayer was offered by the Chaplain to the convention, Rev. L. B. Fifield, as follows:

Have mercy upon us O God, according to thy loving kindness, according unto the multitude of thy promises blot out all our transgressions. Teach us the counsels of thy truth that we may walk in the way of the Lord Jesus Christ. Amen.

Reading of the Journal.

The journal of last days proceeding was read and approved.

Governor's Residence.

Mr. CASSELL. Mr. President. I have a report I wish to submit.

The Secretary read as follows:

"Your committee on State Institutions and Public Buildings to whom was referred the resolution 'to inquire into the expediency and expense of purchasing an executive mansion,' beg leave to submit the following report:

We have conferred with Gov. Butler and ascertained the cost of his property, which he will sell at cost.

Cost of mansion..........	$22,000
Cost of furniture........	10,000
Cost of barn and out bldg's	3,000
Cost of fence and painting	2,000
Cost of trees, walks and shrubbery, etc......	1,000
Cost of 8 acres............	2,000
Total cost of 8 acres and improvements	$40,000
Total cost of 40 acres and improvements....	50,000
Total cost of 120 acres and improvements	60,000

Will take what he owes the state for part payment and state warrants for the balance."

Mr. McCANN. Mr. President. I move that the report of the committee be referred to the committee of the whole.

The motion was agreed to.

School Lands.

Mr. VIFQUAIN. Mr. President. I have a resolution to offer.

The Secretary read the resolution as follows:

Resolved. That the Secretary of the Interior is hereby respectfully requested to inform this convention in what condition are the lands selected by the state of Nebraska in 1861 or subsequently, in lieu of Sections 16 and 36, amounting altogether to 9.833 acres; and we also respectfully request him to notify the several land officers in this state to stop any further disposition of said lands, and to cancel the entries made by private individuals upon said lands."

The PRESIDENT. If there is no further business under this head the special order, to go into committee of the whole on the executive article, will be taken up.

Mr. WOOLWORTH. Mr. President. I move a suspension of the rule which conflicts with our reconsideration of section seventeen in committee of the whole.

Mr. MYERS. Mr. President. I see the difficulty into which the committee fell yesterday. It is impossible for the committee to make a correction by reconsidering. The rules of the convention leave in the hands of this body a remedy full and complete. When this bill is reported to the convention it is open to amendment, and the gentleman can reach his object that way.

Mr. KIRKPATRICK. Mr. Chairman. The matter can be easily reached when the article is reported back to the convention, and there will be no difficulty in reaching it then.

The convention divided and the motion was agreed to.

The PRESIDENT. The convention will now go into committee of the whole according to special order.

Committee of the Whole.

The convention went into committee of the whole. Mr. Myers in the chair.

The CHAIRMAN. The committee of the whole have again referred to them the article on executive. Sec. seventeen is before the committee.

Mr. WOOLWORTH. Mr. Chairman. I move that we strike out the words "conviction or" after the word "death" in the first line.

Mr. KIRKPATRICK. Mr. Chairman. I do not know whether that ought to be in the constitution or not. Suppose we are at present living under this constitution. I just call attention to one case. Last February Articles of Impeachment were presented against the Auditor. Under this constitution that Auditor would have been suspended without having been brought to trial, and the committee intended to report this power; it was in favor of reporting this section as it stands, that the executive was removed from office as soon as he was impeached.

Mr. WOOLWORTH. There are two questions Mr. Chairman which are presented to us for consideration. One is—whether, if we merely strike out the two words "conviction on" we will accomplish the object I have in view, and also the views of the committee which reported this article. That is to say, whether the Governor would be suspended from his office immediately upon presentation of articles against him by the house. And I say the first question is that the language be clear and explicit to accomplish that purpose. Turning from the article as reported by the committee, and looking in the Illinois constitution we have in the 24th section—"The House of Representatives shall have the sole power of impeachment." The power to impeach is vested in the House. That is precisely the language used in the constitution of the United States, and is a phrase used, I believe in all these constitutions. The same provision, if I recollect correctly, will be found in the Article reported by the committee on legislature in this house, in the 16th section of which we find—"The House of Representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein." So that the power of impeachment being in the representatives, that is when they shall pass a resolution that an officer be impeached and prepare and carry their articles, by their managers, to the upper house, the Senate, and present them to the senate, then at that moment, the power is exercised and the officer stands impeached. Just exactly as when a person is charged before a grand jury with the commission of an offense, and the grand jury having deliberated upon the charge, and directed the officers to prepare a bill of indictment the bill is presented to the grand jury and approved, and carried and presented to the court, at that moment the person charged stands indicted. Just so it is when the articles are carried up from the lower house to the upper house and presented there, then an officer is impeached. That shows that this language will be perspicuous, distinct and simple, by striking out the words "conviction on." That shows, I think, plainly that the language is clear, and is the usual language employed where the principle is adopted which is aimed at by this amendment. That is one question, simply relating to the language. The other question is—whether we shall provide, in this constitution, that the governor shall cease from the exercise of the functions of his office as soon as these articles are presented, or shall permit him to go on exercising the functions of his office after the articles are presented, and up to the time that the vote shall declare him guilty. Those are the two questions. This last is the question particularly raised by the amendment and a matter of principle to be considered by the convention.

Now, I have not very much to say upon this matter. I think I discharge my duty by explaining the different matters to be considered. But there are, it is suggested by the gentleman from Cass, a great many constitutions which do not provide that the governor shall be suspended as soon as the articles are presented. I think that is not the usual provision, but I think it is a wise provision to suspend him from the exercise of his office at that time. The article, as it is drawn, does not relate to the order, does not relate to any other state officers than the governor, and the rule ought to be different, as it seems to me, in respect to the chief executive officer of the state, related as he is, with very large powers and great influence by reason of his official position and duties; that the rule ought to be different in respect with the chief executive from what it is with the heads of the subordinate departments of the executive. There is great reason for saying that when the chief executive, the highest office in the state, by the action of that department of the legislature which is supposed most directly, not most completely, but most directly to represent the views of the people, that as soon as that body finds there is probable cause for charging him with grave crimes and misdemeanors in office, that he should immediately cease from the exercise of his functions, and therefore, as a matter of principle, I am in favor of striking out these two words, and provide that the governor shall be suspended from the exercise of the duties of his office just as soon as the lower house shall by their articles duly presented to the senate, say, in the most solemn manner that they believe him to be guilty.

Mr. HASCALL. Mr. Chairman. I like, in inserting language in the constitution, to have it as concise as possible. I agree with the gentleman who has just spoken as to the necessity of suspending an executive upon presentation of articles of impeachment. But if we leave it to read "in case of death, impeachment, etc.," it will be better than to say "in the case of death or on the presentation of articles of impeachment." The presentation of articles is merely an incidental matter, and is therefore proper for the reason that it does not add to the brevity and distinctness of the section. There is no mistaking what the word "impeachment" means; and I think the words "conviction on" ought to be stricken out. The moment the resolution is passed and he is accused at the bar of the senate he is impeached, and the articles are merely a formality. I therefore move to amend by inserting simply the word "impeachment."

Mr WOOLWORTH. I withdraw my motion and the motion now simply is to strike out the words "conviction on."

Mr. HASCALL. That is all right then.

Mr. ESTABROOK. Mr. Chairman. There was some considerable difference of sentiment among the people within the last six months in regard to the significant terms which are employed in this section; and it led to some little inconvenience and I imagine that the difficulty which followed from it was in consequence of the fact that the terms themselves were not generally understood.

There have been but very few cases of impeachment, so that in the public mind among the people generally the terms applicable in impeachment are not very well understood. But it is well enough settled that the term "impeachment" signifies precisely the same as indictment. It is equivalent to saying that when a party is indicted his functions shall cease. There is ground for some difference of opinion as to whether the impeachment is complete or whether, if it be complete, it work a suspension so soon as impeachment has been perfected in the lower house, or whether it should work suspension when reported to the senate. My opinion is that it does not work a suspension until reported to the senate. So soon as he is impeached, that is to say, so soon as the resolution passed the lower house, the functions of the executive should cease. I do not think the executive of the state should be allowed to exercise those functions during the progress of a trial of impeachment. We confer not only great powers upon him usually but great moral patronage, and if there was occasion to impeach the governor it might be reasonably supposed that officer was sufficiently corrupt to use his powers in securing a verdict or a decision that would exonerate him.

If the officer shall be removed upon conviction as a part of the judgment of the court, then there is a vacancy. The proposition does not apply to this, because the functions of the party ceases with his office. You would, of course, not suspend his functions after conviction unless he was removed.

The CHAIRMAN. Gentlemen of the convention, are you ready for the question. The motion is to strike out the words "conviction on."

Mr. ESTABROOK. Mr. Chairman. I move to add the words "to the senate," after the word impeachment.

Mr. THOMAS. Mr. Chairman. I am in favor of the section as it stands, because I think it is sufficiently plain. I think it corresponds with the constitutions of most of the states. I understand that the English practice is, as soon as the resolution has passed the House of Commons, the House of Lords is notified that such a resolution was passed, and the person accused is notified that he is impeached. I will read a section from Jefferson's Manual in relation to the English practice.

"The general course is to pass a resolution, containing a criminal charge against a supposed delinquent and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons, the person signifies, that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the Peers will take order for his appearance."

It appears from this, that the member might be sequestered from his seat. In this case, impeachment must be the passage of a resolution in the House of Commons and a notification to the House of Lords. I doubt the section should be changed. I think, at the present time, it corresponds with the statutes of most of the states.

The CHAIRMAN. The chair will beg leave to state that the course pursued by the House of Representatives in this state, was in accordance with the rule laid down in Jefferson's Manual.

Mr. ESTABROOK. Mr. Chairman. It is very true that the path here marked out is very clear, and very distinct. Now the question arose in our state,—never was settled—as to the exact period when the functions of our governor ceased. Even after the articles were carried and were reported to the senate, the secretary of state upon whom the duties devolved after the impeachment requested him to surrender the department. The governor insisted that he was not suspended—that he was not impeached until he was notified; that the articles of impeachment ment should have been served upon him, and whether that was tenable ground or not never was ascertained. It is true that he continued to serve as governor until the articles of impeachment were served upon him. As it is easy to add a few words and put this thing beyond doubt and cavil, it seems to be the part of wisdom to do so. If we mean to say that the functions of governor shall cease when these resolutions have passed the House, it is easy to say so. If we mean to say that these functions shall cease when the senate decides upon the matter, let us say so: If we mean to say that these functions shall cease when he is impeached by the senate, it is easy to say so. We know we have had some little difficulty by the obscurity of this passage as it is. It is a very easy thing to settle all these questions now, and it strikes me it is the part of wisdom to do so.

The CHAIRMAN. The question is to add the words "to the senate," after the word "impeachment."

Mr. MASON. (To Mr. Estabrook.) Does the proposed amendment "to the senate"—this notification to the senate would operate to bring about a ceasing of the functions of the executive office?

Mr. ESTABROOK. Yes, sir.

Mr. MASON. For myself I think his official functions should cease when he is informed of the pending of the articles. I hope, certainly, this may be done with other officers than the executive, who are liable to be impeached. Your judges, for instance; a judge might be holding court when the articles of impeachment were preferred against him, he is not notified then and he has no notice of the pendency of the articles until at least a day or two after they have been preferred in the senate. I suggest to the gentleman to add, further, the words "and the accused is notified."

Mr. ESTABROOK. Mr. Chairman. I am in favor of that and accept it.

Mr. MASON. It seems to me, Mr. Chairman, that this rule is a good one and ought to commend itself to the committee. The accused should not be suspended until he is notified that he has been impeached. As I said before I have given this question but little consideration, but I once in my life reached the conclusion that the official functions were not suspended until the notification of impeachment by the senate, and that the official functions do not cease until the governor is sequestered from his seat, or notified of the pending of the articles. I suggest the inserting of the amendment of the gentleman and the words "and notice to the accused."

Mr. ESTABROOK. I accept the suggestion.

The CHAIRMAN. The question is:

on the amendment.

The amendment was agreed to.

Mr. MASON. I move to insert after the word "notice" the word "thereof."

The motion was agreed to.

Mr. MASON. I move the section be adopted, as amended.

The 17th Section was adopted.

The CHAIRMAN. Sections 18 and 19 having been adopted on yesterday by the committee, the question is on the adoption of section 20.

The Chairman read the section as follows:

Sec. 20. If the office of auditor of public accounts, treasurer, secretary of state , attorney general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law. An account shall be kept by the officers of the executive department, and of all of the public institutions of the state, of all the moneys received or disbursed by them, severally, from all sources, and for every service performed, and a semi-annual report thereof be made to the governor, under oath; and any officer who makes a false report shall be guilty of perjury, and punished accordingly.

Mr. ESTABROOK. Mr. Chairman. I move to amend by striking out the word "the" before the word "auditor" and after the word "auditor" the words "of public accounts."

Mr. WOOLWORTH. The first section says "auditor of public accounts," and I think we ought to have the different sections of the article agree. The word "the" is a typographical error.

Mr. ESTABROOK. If it is right, then our laws as they have existed ever since we have been organized as a government, have been wrong. It seems to me the simple word "auditor" is preferable.

The motion was not agreed to.

Mr. TOWLE. Mr. Chairman. I move the adoption of the section.

Mr. HASCALL. Mr . Chairman. This motion was susceptible of division and was voted down on that account. I move to strike out the word "the" before "auditor."

The CHAIRMAN. The committee has refused to strike out these words, and a motion cannot be made to strike out again.

Mr. WOOLWORTH. This word "the," is a typographical error, and was not the original report.

Upon this question of order I wish to be heard. I think the chair is mistaken for the reason that we have adopted Cushing's Manual and it says "that if there is a motion made to strike out certain words and it fails, you may afterwards move to strike out the same words in connection with other words."

Mr. MASON. Mr. Chairman. I rise to a point of order, we have no question before the committee.

The CHAIRMAN. The point is well taken.

Mr. KIRKPATRICK. Mr. Chairman. I have been misled, having a different report from the other gentleman and think it is right.

The CHAIRMAN. The word "the" will be stricken out by unanimous consent. The question is on the adoption of the section as amended.

The motion was agreed to.

The Chairman read the next section as follows:

Sec. 21. The officers of the executive department, and of all the public institutions of the state, shall at least 10 days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports to the general assembly, together with the reports of the judges of the supreme court of defects in the constitution and laws; and the governor may at any time require information, in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

Mr. ESTABROOK. I move to amend by inserting after the word "governor" in fifth line the words "or either house of the legislature."

The amendment was agreed to.

Mr. KIRKPATRICK. I move the adoption of the section.

The motion was agreed to.

The Chairman read the next section as follows:

Sec. 22. There shall be a seal of the state, which shall be called the "Great Seal of the State of Nebraska," which shall be kept by the secretary of state, and used by him, officially, as directed by law.

Mr. EATON. I move the adoption of the section.

The motion was agreed to.

The Chairman read the next section as follows:

Sec. 23. The officers named in this article shall receive for their services a salary, and they shall not, after the expiration of the terms of those in office at the adoption of this constitution, receive to their own use any fees, costs, perquisites of office or other compensation. And all fees that may hereafter be payable by law for any service performed by any officer provided for in this article of the constitution, shall be paid in advance into the state treasury.

The salary of the Governor shall be $3,000. The salary of the Secretary of State, of the Auditor of public Accounts and of Superintendent of Public Instruction shall each be $2,000. The salary of the Treasurer shall be $2,500. The salary of the Attorney General shall be $1,500. The Lieutenant-governor shall receive twice the compensation of a Senator.

Mr. KIRKPATRICK. I move the adoption of the first clause of the section.

Mr. NEWSOM. I move to amend by striking out the word "own" in third line.

Mr. MASON. I do not rise to address myself to the motions now before the committee. Doubtless this section when reported by the committee was correct. It may be so now, but if he thinks to go back and exclude all state officers it may be very questionable. Until we amend this section no other officers were included excepting in the cases named in the first section. Since that time we have referred to all state officers. Now, if this is to be limited to the six who are designated by their name or office it should prevail. But if it is to apply to all officers, land officers and others, it seems to me questionable whether it should prevail or not.

Mr. WOOLWORTH. It seems to me very plain—"the officers named in this article."

Mr. MASON. I only desire to say

that I preferred, instead of the word "article," "the officers named in the first section;" then there can be no question raised in respect to this matter. I prefer the term "article," so as to say what we mean and nothing more. I throw it out as a suggestion.

Mr. KIRKPATRICK. Mr. Chairman. The object of the committee in reporting this section was simply that it provides for the salary of all these state officers named in this article; and it is not the intention of the committee to allow them to receive fees outside their salaries. The fees received by the Secretary of state should go into the state treasury.

The motion of Mr. Newsom to strike out the word "own" was lost.

Mr. THOMAS. I desire to ask the chairman of this committee whether this section is correctly printed or whether the words "to be established by law, which shall not be increased or diminished during their official terms," were intentionally omitted.

Mr. WOOLWORTH. It was stricken out by the committee. It was done because in the constitution of Illinois the salaries are fixed in the legislature. It is proposed to adopt another policy and fix the salaries in the constitution. Of course if they are fixed in the constitution they cannot be increased or decreased by the legislature. Therefore the provision in the Illinois constitution became unnecessary by reason of fixing those salaries.

Mr. MASON. I now move to strike out the word "article" in the first line and insert the word "section." So that it may read "the officers named in this section." The three officers are named, it will be observed in the latter part of the section.

The motion was agreed to.

The CHAIRMAN. The question now recurs upon adopting this paragraph.

Mr. BOYD. I move to insert, after the word "salary" in the first line, the following: "To be established by law, which shall not be increased or diminished during their official terms;" and insert before the word "the" in the seventh line, "only established by law."

Mr. CHAIRMAN. The motion to amend the last paragraph does not come in until we have disposed of the first section.

Mr. BOYD. I offered my amendment to the second part of the section to make it correspond with the first.

The CHAIRMAN. Then it reads: The officers named in this section shall receive for their services a salary to be established by law, which shall not be increased or diminished during their official terms.

Mr. ESTABROOK. Is that as far as the amendment goes?

The CHAIRMAN. Yes.

Mr. ESTABROOK. Then I think am in favor of it. Now the salaries that will be required for these various offices at the present time will be different, it seems to me, to those which will be required in the future. In the first place, from some of these officers the state is going to require duties that will demand peculiar fitness and will require talent that would be worth more than it would be subsequently when the duties were less responsible. For Attorney General the man should be the best lawyer in the state of Nebraska. He will be required to look after the lands that have been taken from the state and pick up evidence in relation to them, and must endeavor to disentangle the web that has been woven around our affairs, and all this outside his other duties, such as giving advice, prosecuting criminal cases, issuing forms of procedure, etc. I know it requires a good deal of wisdom and industry. I do not think myself that all the wisdom is going to die when this convention dissolves. I am perfectly willing to leave it to the future legislatures of this state to say what they are able to pay, as it is in the amendment.

Mr. WOOLWORTH. Mr. Chairman. I desire to say one or two words more. I do not think all the wisdom is going to die when this convention adjourns. I think the legislatures which are to sit in this hall hereafter, most of them, will all probably be composed of discreet and honest men. But it is very easy to see that when an officer of this state is once installed in his office and the legislature is assembled here, I say it is very easy and it would be very natural for that state officer to go to that legislature, and, by addressing himself to each individual member of it, or to a certain section of it, get them to increase his salary. It may be very largely increased, and it is to relieve the legislature from those sort of importunities that the committee undertook to fix the salaries in the constitution. Now, it is suggested by my friend who proposed the amendment that these salaries may not be increased or diminished during the term of office of any particular incumbent. Very true, but that does not relieve the matter of the difficulty that I have adverted to, because these officers will be subject to re-election, will be pretty certain to desire re-election some of them at any rate, and will very likely go to work to induce the legislature to increase their salaries, expecting to be re-elected. So much for what has been said by the gentleman from Douglas, (Gen. Estabrook) in reference to the comparative virtue and wisdom of this body and the legislatures which are to sit here hereafter. We are so circumstanced as not to be subject to these importunities at all. The legislature will be subject to them, and, therefore, I think our circumstances are unlike. Now, as to the salaries which should be fixed instead of varying them from time to time. Reference has been made to the Attorney General and the duties that would be entailed upon him at this juncture, in disentangling state affairs. I will tell you what I think about that. I don't think you can fix a salary—no legislature of this state, nor this convention can fix a salary, can agree among themselves upon the salary that shall be paid to the lawyer whose duty it shall be to go to work and untangle this action. I know you would be surprised to hear me state what I would pay the attorney general who addresses himself to this work. It would be a very large sum. What do you think the Union Pacific railroad company pay the very competent gentleman who has charge of its business? It is a very large sum. Why does that corporation pay that large sum for this lawyer's services? Because they think it cheaper to employ a good and capable man, and pay him a good salary. Will the gentlemen of this convention undertake to pay to this attorney general the same salary this gentleman receives from the Union Pacific? I think not, I think it would be foolish. When the question comes up, "how are you to get the services?" Not by increasing the salary of the attorney general to the enormous sum he receives, but let the legislature, as heretofore, vote to employ special counsel in all important matters. It is the only way it can be done. It can't be done by fixing the salary. Therefore I think it is better to leave this matter as the committee has left it. I think it is better to adopt the clause that now is before the house unamended. That is to say, I think it is better for this body to fix these salaries in this constitution rather than to leave the matter with the legislature.

Mr. TOWLE. Mr. Chairman. Perhaps I am a little in the dark in relation to the amendment proposed. I understand that the legislature shall have power to increase the salaries during the term of office of some of the officers. The idea proposed by the gentleman from Douglas (Mr. Estabrook) that those present officials would be importuning these legislators for an increase of salary, I think it is a good argument, and the point is not well taken. If the salary was increased it would hold out inducements for other candidates to that office. It is a favorite method with state officers to hold out to the world the pretense that the office is worth nothing—it is scarcely paying expenses. Now can this constitution establish these salaries for a term of years? The currency may change. There may be a war and the currency of our country may not be worth as much as it is now. In other words when we give $3,000 today, in other years it may not stand for more than $1,000 or $1,500. I am in favor of the amendment of the gentleman from Douglas (Mr. Lake.)

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Douglas.

Amendment not agreed to.

The CHAIRMAN. The question is upon the paragraphs as amended.

Agreed to.

Mr. KIRKPATRICK. Mr. Chairman. I propose to strike out the first line, which fixes the governor's salary at $3,000, and fix it at $2,500. I don't propose to make any elaborate remarks upon this point, but I consider it is too high, and I therefore move to strike out the $3,000 inserting $2,500.

Mr. CASSELL. I move to amend the amendment, and make it $6,000.

Mr. MASON. Mr. Chairman. I desire to address myself to this question, and to say a few words with regard to these particular amendments proposed. I don't think it wise to fix the salary for any of these officers, which is unchangeable by the legislature. Let us consider this question in a light of experience of the last ten years. I well recollect that in the beginning of 1862 a dollar was worth a dollar; but within the two years that followed it took $2.75 to buy as much as $1.00 would buy at the beginning. In the beginning of 1862 $1.00 would buy as much in the market as $2.50 would two years from that time. You cannot fix an irrevocable standard value upon money. We pay these officers in money. I can one year, hire the same help for $20 per month that the following year will cost me $30. I allude to these matters as practical every day affairs of life, and it behooves us to be guided by these practical rules for fixing the salaries of our officers.

Now in conclusion I think that it might be wise for the legislature to fix both minimum and maximum salaries. I think it would be wrong to fix an inflexible salary for any of our officers. While I do not address myself to the consideration of the amendment offered by the gentleman from Douglas, I do hope it may prevail. I would not leave it in the power of the legislature to change the salary of the governor during his term of office; but I would leave it free for them to fix the salary at some reasonable sum. I have found and here again I can only be guided by my own experience, and by that experience which I apprehend is within the mind of every gentleman in this committee. I have found in all the relations of life that cheap help was the dearest help I had about, and where is the man that has not? And as your business increases you must increase your salaries in order to secure a good care of your business. We have heard in this convention of the capacities of these great corporations to extend their influence and secure their aims. How is all this done? Why, in every instance you see them commanding the best talent in all the land. How? By buying it, by hiring it, and it seems to me that we might learn a lesson of wisdom in this direction. While we ought not to pay such large salaries, let us connect the honor of the office with a salary sufficient to secure the services of good and competent men. While I would not fix the bands of the constitution like the laws of the Medes and Persians, yet I would like that this may be fixed so as not to be changed during the time of office, and also to have the maximum and minimum of the salary fixed by the constitution. In speaking on this subject I wish to call the attention of the convention what we have already done. We have taken steps to inquire into the expediency of securing an executive mansion. Since the introduction of that resolution I have changed my views somewhat on it and I think it would be well to consider the expense of this movement as compared with the rent necessary to be paid for a suitable mansion, and I may here remark that the executive of the state is expected to embody the hospitality of the state, that hospitality of which every citizen of the state of Nebraska is proud, should be placed within his grasp so that he should not have to put his hand into his own pocket to supply it. Permit me to suggest that your salaries have been beggarly low in the past and it seems to me that here lies the temptation to social ruin not only in the state but the disintegration of our political relations abroad. It seems to me, Mr. Chairman, that there is reason for this founded not only in experience, but also in divine revelation. I think I had occasion once before in this convention to say that that man has not yet been born who can tell just what amount of temptation he may withstand and that is the reason of the injunction to pray "lead us not into temptation." What do you expect of a state officer, if it is not the concentration of all his mental powers in the faithful performance of the duties of his office? It is idle to talk morals to a man whose children are hungry. It is idle to talk public business to a man when his family is in need. It is idle to talk of compelling the several state officers to move to the Capital city of Lincoln on meager salaries.

This is all the reflections I desire to make at the present time. If the views which have suggested themselves to my mind shall meet the views of a majority of this convention, then I desire at the earliest convenient moment of time that it may be entertained here to move the recommitment of this section to the committee.

Mr. KIRKPATRICK. Mr. Chairman. I in the main agree with the gentleman, (Mr. Mason). I agree with his premises, but not with his conclusions: The question as I understand it is on inserting $6,000. I have an amendment which I wish to offer at the proper time. I will read it now, to add at the close of the section "until otherwise provided by law." Now sir there has much been said here on the fluctuation of currency. Now sir, I undertake to say that it is not competent for this convention to take into account these sliding scales of value, and therefore I am in favor of leaving this matter to the legislature. Now sir, there are men of different degrees of proficiency, and we wish to secure such as will prove most competent to execute the duties of the office.

I undertake to say that there are men in Nebraska as well qualified to discharge the duties as any men in it working for a salary of $1,000 a year. This is a question that touches the pockets of the people. I think every good man ought to be influenced by patriotism, ought to be willing to serve his fellow citizens, not without compensation, but he may decline if the salary is too little. My opinion is the whole question should be left to the legislature. There has been a good deal said about beggarly salaries. I beg to read from the constitution of Iowa, adopted in 1857. "The salaries of judges of the supreme court under this constitution is $2,000 per annum, district judges $1,600 per annum up to the year 1860, after such time they shall receive such compensation as the legislature shall by law prescribe."

Mr. BALLARD. Mr. Chairman. I wish to make one or two suggestions. I am opposed to leaving this important matter of salaries to the legislature. I am surprised that gentlemen should talk as though the paying of salaries was an eternal matter. Did we not make some arrangement to amend the constitution at the will and pleasure of the people? I am opposed to high salaries, and stupendous palaces for our servants, while a great many of my constituents, are living as it were, in the ground, and the people will vote the constitution down if you attempt it, What is the experience of our neighbors? Take the state of Iowa, no state ever paid her officers less money than the state of Iowa. No state stands better as to the character of her state officers, as to her finances than does Iowa, save and except California as to finance. I am opposed to high salaries and opposed to leaving it to the legislature. When the constitution goes to the people, they want to know what they have to do financially as well as otherwise, if it is found the salary is too low, the people may change it. If you elect an honest man he will not take a dollar that does not belong to him. if he becomes a beggar by it, and while I dissent that low salaries make thieves, I am willing to pay gentlemen what they are worth.

Mr. CASSELL. Mr. Chairman. The convention seems disposed to have the governor reside at the capital. It is well known to all the gentlemen, that as a general rule this is the most expensive place in the state to reside at . I am pretty well posted in the rents and so forth in this place and perhaps a few figures on this question would not be amiss to show how much the governor would make out of $3,000. In the first place it would cost him eight hundred or a thousand dollars for the rent of a suitable house. It is not likely that a gentleman elected governor would like to bring his own furniture here. It would probably cost $2,000 or $3,000 to furnish a house appropriately to receive officials from other states. It has been customary for the state officials to have a reception occasionally, this cannot be done for less than five hundred dollars. This consumes the whole of the $3,000. What does the governor have for the labor he performs for the state? If we want good men, men appropriate to transact our business in a proper manner, we should certainly be willing to pay them a decent salary over and above his expenses. It seems to me that $3,000 additional to his expenses would be a very small sum. Suppose you elect a merchant or a legal gentleman, whose income is $3,000 to $5,000, would you ask him to sacrifice his business or profession to come here to be governor and leave the office with less money than he had when he took it, in addition to losing custom? I think this question should be postponed. Some action might be taken on the residence of the governor. If we agree to purchase the residence the salary should not be so high. In case the convention does not see fit to pass that resolution, I am decidedly in favor of $6,000.

Mr. BALLARD. Let me ask the question—does not history show that the small salaries secure competent officers?

Mr. CASSELL. No, sir, I think not.

Mr. GRIGGS. The ideas advanced by the gentleman from Otoe certainly meet my approval. I am opposed to making the salary of the governor $6,000. I do not think it would be required; It would not be policy. Neither am I in favor of placing it at $2,500. I do not believe any man who has the ability to act as governor would accept such a salary, and leave his business to come here. Leave it so that the legislature may change it when necessary. The gentleman from Washington says he knows a great many men capable of discharging the duties of the governor who are at present living in the ground.

Mr. BALLARD. I said I was opposed to fine palaces and high salaries when many of our citizens lived in the ground. I did not say they were eligible for governor, yet I do say I do not think they are not.

Mr. GRIGGS. Bring them into the position where they come in contact with men from all parts and have to entertain visitors and they will be placed in different circumstances. I am opposed to those insufficient salaries, and I believe that the gentlemen from Washington and Cass who are the advocates of the low salaries, are the enemies of the state. What man will come here for $2,500 when it will cost him $3,000 or $4,000 to pay his expenses while here?. It allows no man to accept the position ununless he has lots of money to spare. I am opposed to allowing any man, just because he has the money, to step in and take the place in preference to a man who is just as worthy, but is unable because he is poor. I believe any man whose ability is such as to entitle him to the position has the right to accept it; and I am opposed to inadequate salaries.

Mr. STRICKLAND. I should suggest that this be re-committed; and that when the committee rise they so recommend; or pass the section over.

Mr. WOOLWORTH. I hope this will not be sent back to the committee without some expression on the part of the house on the matter. I am satisfied the committee are not likely to make a report very unlike that which they have already made. There was considerable disagreement between the members of the commit tee upon this matter, and they came together as well as they could, and I think it is desirable that when it goes back to the committee it should go back with some expression of the house in reference to this matter. And now, sir, perhaps this is as good an opportunity as I shall have to express my views upon this matter in all its different aspects. I am opposed to the suggestion made by the gentleman from Cass to remit this matter generally to the legislature, for the reasons I stated when upon the floor before. But, at the same time, I recognize the cogency of the argument of the gentleman from

Otoe in respect to the changes which must, and have and are likely to take place in the value of money, and the expense of living. And that it is desirable that this matter should be made, if possible, subject to some fluctuations. There are serious defects, I apprehend, in the way of realizing the remedy he suggests—a maximum and minimum salary. I think it will be exceedingly difficult to frame a provision to be incorporated in the constitution fixing a maximum salary and a minimum salary, and leaving it to the legislature what the entire sum to be given shall be? But, I shall have this proposition to make when the right time shall come—that a proviso be added at the end of the section that at the expiration of some period of time the legislature may readjust these salaries, and at the expiration of like periods of time like re-adjustments may be made—all by a general law. I know it may be objected that this will change the officer's salary during his term of office; but that same objection might be made to the suggestion of the gentleman from Cass, which, I understand is approved by some of my colleagues. If the matter be left with the legislature then change might be made during the the term of office of the incumbent. It seems to me that the difficulties of the case would be somewhat obviated by providing that the legislature might, by general law, at certain specific times, re-adjust these salaries. That is all I propose to say with reference to the matter. And now I wish to say something with reference to what these salaries shall be as fixed in the constitution. Now I know perfectly well that this is a very troublesome matter for us to come to an agreement upon. Our habits of living and our employments are so unlike that it is exceedingly difficult for us to come to a conclusion. Now, with the very small family I have, and accustomed, and, from taste preferring, an exceedingly modest way of living, I can afford to live, and I presume I do live, and my colleague before me knows it perferctly well, on a very moderate sum; but there are gentlemen accustomed to a little freer way of living, who have a larger family, and they are accustomed to the expenditure of much larger sums of money; and so other gentlemen here, pursuing employments that do not call for the moderate expenditure in which I myself indulge, are willing to establish smaller salaries than I think right. And so it is that we have great difficulty in coming to an agreement. I see how troublesome it will be, and therefore I desire to invoke not only the attention but the utmost liberality towards one another's views in the consideration of this subject. And right here I beg to answer an enquiry addressed by the gentleman from Washington (Mr. Ballard) to the gentleman from Lancaster (Mr. Philpott), as to whether the history of state government throughout the country showed that smaller salaries did not secure competent officers. I can answer the gentleman, and from history, and I do answer him from history when I tell him that small salaries have not secured the best officers, and I do answer him from the history of the state to which he appealed. I answer him from the history of the state of Wisconsin. I answer him from the history of many states of this union, and I tell him that the small salaries which have been fixed in the constitutions of those states have not secured even competent or honest officers. Why, the gentleman from Cass reads from the constitution of Iowa, and shows that salaries of the supreme judges were fixed at $2,000. Well, sir, some of the gentlemen who sat upon the bench of the supreme court of Iowa have adorned that bench, and been a credit to the state, but upon what have they lived? Upon their salary? No, they have not lived upon that. One gentleman who fills the office of judge has been compelled to edit a Law Journal, which gives him about two thousand dollars; he also fills the professorship of a law college, which gives him about a thousand dollars more. Gentlemen who fill these offices there, are compelled to eke out their salaries by means of private funds or take other positions. So much for a part of the history of Iowa. Now I ask your attention to still another page in her history. I know that the private secretary of one of the governors of the state of Iowa was charged with very high crimes, and was actually indicted by a grand jury, but the matter was finally smoothed over, in some way, but it is believed today by the people who are conversant with the facts that he committted the crime for the sake of advancing the interests of, or rather for the purpose of securing money for his superior officer. Gentlemen talk about meager salaries in this state and malfeasance of state officers. Let me tell you, you may expect malfeasance and misdemeanors in office so long as you pay such low salaries. You pay small salaries secure small men to fill your offices. There are enough good men; competent men; honest men in the state, but they cannot live upon the salaries that you offer. They will not take the offices. They have too much self respect to take your offices. So you get second and third rate men, they take your offices and eke out the salary with what they get otherwise. I ask my colleague (Mr. Estabrook) who formerly lived in the state of Wisconsin, what has become of the school funds that state received—twice as much, when she came into the union as Michigan received? What has become of her school funds, and her university lands? It is one of the blackest chapters ever written in the history of any state. It was written by public officers who were paid, each, two thousand dollars per year. Now sir, that is the history of small salaries. That is what comes of taking men who are incompetent when they come into office, and dishonest when they go out. Forty thousand dollars of the school monies belonging to the state of Iowa were swept out of her coffers. Ten thousand dollars, perhaps, were saved by paying her officials small salaries and forty thousand dollars were swept out of the state coffers. These, sir, are histories such as the gentlemen from Washington (Mr. Ballard) desires. It is the disgrace of this country sir, that these chapters have been written in almost every thing with which small salaries are connected. See what has been done in Nevada and California and other states of the west. There never was a time since the days of Kent, Spencer, Pratt and Van Ness, we have had no such judicial decisions anywhere else, as has been recorded in the state of California. Commencing with the Tenth Volume of her Reports and coming down to the Thirty-ninth, there is not a judicial decision recorded that does not command the attention of all the lawyers of the land, today they are quoted as law in Westminster. How does it come that the judges of that state are men of such a high order of talent. It is because their salaries are fixed at $10,000 per annum, in gold. By paying this salary the people of that state have secured for their judges men of as good legal ability as can be found in the United States, and with all her wealth of mines, with all her wealth of gold, the true wealth of the state of California today consists in the judgments of her courts recorded in these twenty-nine volumes of her decisions. There is a monument; there is glory; there is wealth of which any state may be proud, and which is far superior to the wealth which is dug out of the hillsides of the "golden state," and just so it is in the executive department of that state. The gentleman from Cass (Mr. Maxwell) says he knows men who are competent to fill the office of treasurer of this state who would be glad to take the office at a thousand dollars per annum. I presume there are accountants in this state who are willing to take a thousand dollars and do the duties of that office. The First National bank at Omaha pay their book-keepers, each of them, $2,500 and some perquisites which carry their pay up to $3,000 or $3,500. Why the boy, not yet twenty years old, who goes around to make collections for that bank, is paid $1,200 per annum, and you propose to pay an officer of this state, into whose hands shall pass the immense sums of money belonging to the state, what is paid these clerks and even less. Why, what are the duties of the governor, and what the duties of the treasurer of this state? Simply to keep accounts? I think their duties are very high duties. They are duties which require not only labor, time and attention, but they require the highest—the most serious thought and reflection. The conscientious man who holds one of these offices cannot help, if he would, but be pressed with the cares and the responsibilities of his office. Why, I would not give a snap for a lawyer who would not be exercised—exercised, yes agonized at times with the responsibilities forced upon him. Every man must so feel at times or else he is not the fit man for those duties, and these officers must feel in this way and feel this conscientiousness and desire their whole duty, not for themselves but for the state they serve. To be an officer of this state bearing upon his shoulders the responsibilities that is always there—to be the chief executive or to hold any one of the offices of the executive department is an honorable trust, worthy the abilities of wise, just and high minded men, and those are the men that can only be secured by paying them for anxieties and care of such office. Now sir, I am in favor neither of paying $2,500, $3,000 nor $6.000 to the governor, but I am willing to pay him $5,000. Offer that amount and you will secure the services of good men, and I am in favor of giving each state officer commencing with the secretary of the state and coming down $3,000 each. I think these men are abundantly worthy of that amount if they are worthy of the office.

Mr. STRICKLAND. Mr. Chairman. I move the committee rise, report progress and ask leave to sit again at 2 o'clock.

The motion was agreed to.

Mr. MYERS. Mr. President. The committee of the whole have had under consideration the article entitled the executive, and have instructed me to report progress and ask leave to sit again at 2 o'clock. I move the report be accepted and the request granted.

The motion was agreed to.

Adjournment.

Mr. BALLARD. Mr. President. I move we adjourn until 2 o'clock this afternoon.

The motion was agreed to.

So the convention (at twelve o'clock and six minutes) adjourned.

Afternoon Session.

The convention was called by the president to order at 2 o'clock.

The secretary called the roll.

Committee of the Whole.

The PRESIDENT. The hour fixed by special order having arrived, the convention will resolve itself into committee of the whole, Mr. Myers in the chair.

The CHAIRMAN. The committee of the whole have again referred to them the article on executive. The motion of the gentleman from Douglas (Mr. ——————) is pending to insert $6,000 in place of $3,000 salary of governor.

Mr. KIRKPATRICK. Mr. Chairman. I think the amendment should not be adopted. I have heard no good reason why it should. The whole ground of American jurisprudence has been gone over in the discussion of this provision. My learned friend from Douglas (Mr. Woolworth) delivered himself upon the general subject of salaries of officers. He adverted to the state of Iowa very feelingly, and asserted that its judiciary was inferior to that of other states because of the niggardly salaries paid to them. I may remark that I believe they will compare favorably with any western state. He also adverted to the high distinction of the judiciary of California, the great reputation it had, and attributed it all to the liberal salaries paid the judges of that state. I find on examination the pay of the chief justice of the supreme court of the United States was originally $6,000 and associate justices $4,000. They hold one session at the capital each year, besides being placed on service in the states. That had nothing to do with the question before this committee.

I contend that we do not need now to employ this high legal talent; the only argument in favor of a great salary is simply this, that Lincoln is an expensive place to live, he must live in fine style, keep his carriage and so forth. I dissent from all this. I am very sure we will not make a rogue out of an honest man by paying a low salary. I beleive all officers ought to be paid a fair compensation for the services they are required to perform. It would be prodigal to pay an officer more than his services are worth. A gentleman from Omaha remarked that the chief book keepers of the First National bank there received a salary of $2,000 and $2,500 a year, therefore the governor should have at least $5,000. I should say the money passing through that bank in one month exceeds the revenue of the state of Nebraska. I would really prefer not to fix the amount, but leave it to the legislature to increase the salaries when necessary. After looking over the provision made for the pay of state officers generally, I find the report is above the salary usually given to governors in the west. I believe the governor of the great state of New York only receives a salary of $3,000 a year, and I believe there are but two or three states where the salaries are as large as the gentleman proposes to have it by this amendment. Now I do not propose to go over the ground trodden by some gentlemen to talk about making men dishonest by low salaries. I do not propose to say a word in that direction, no matter what my private opinion may be on the subject.

Mr. BALLARD. Mr. Chairman. If the convention will bear with me a few moments I wish to reply briefly to a remark or two made by my friend from Douglas (Mr. Woolworth) for whom I entertain the greatest respect. I do not wish to be set down as one of those who advocate beggarly salaries. I do not wish to be understood as advocating that side of the house, nor do I wish to be understood as advocating exhorbitant salaries with fine houses. Now, suppose we look about us and apply that rule and one that is applicable to the every day transactions of life. Suppose my honored friend, Mr. Lyon here, proposes to take a farm. He looks around and ascertains the amount of money he has to expend, finally determining that he wants a farm of so many acres, and that he wants it improved in this particular manner and that acting wisely, he counts the cost before he starts out. Another gentleman pursues a course contrary to this. The result is patent to every observing man. Hence it appears to me this state, being young, we should consider whether the taxpayers are able to pay these high salaries. My argument is that one man is just as good as another provided he acts just as well. Therefore we should take into consideration the farming interest of this state in this matter. I would be willing to give the governor $10,000 if we were able to pay it. I will now notice the remarks of the gentleman from Douglas (Mr. Woolworth), and the point at issue between us is, if I understand him right that low salaries make thieves. Having taken some notice of a few things which transpired in Iowa, in my argument, the gentleman from Douglas also goes there to look up the business transactions of that state for many years; and he finds, finally, a matter of which I, being in Iowa City at the time know something about. I was there at the time that unfortunate man of whom he spoke was indicted. It was about like this, and was told me by Mr. Wesley Redhead: That this young gentleman, the private secretary of the governor of whom the honorable gentleman spoke, was generally believed to be a thief before he came there, and the people censured the governor for bringing him there; and it was said that the executive hired someone to steal the indictment from the proper office, and he gave something for it and thought that would end it. I want to show the gentleman some stealing that was absolutely done there. In doing so I shall merely advert to the facts. One Thomas H. Benton, and by the by, a good democrat; yes, sir, and a good man, held the office of superintendent of that state for many years under a salary if I mistake not, of $2,500 per year. He served the people in that capacity for many years; everybody respected Tom Benton. All the school fund commissioners throughout the state, except very few, thought the world and all of him. I happened to be personally acquainted with Thomas Benton; official duties brought me in contact with him. When he went out of office he did so with credit and honor to the state. No one charged Thomas H. Benton with being dishonest. A gentleman by the name of James D. Eads was elected to succeed him. Mr. Benton was a good deal like my honorable friend from Douglas—a man that economized. But Mr. Eads was a gentleman who could not live very well with only one lady, and she a lady of doubtful virtue. He sometimes had two, and fine horses and fine whisky induced him to do what? It was not long before it was found $40,000 of the school money of Iowa was stolen. How does it come that Benton was honest and Eads dishonest? Now, I come to the position I took in the first place. If a man is honest in the first place his salary don't affect him in the least, but if he is a thief he will steal all he can. If a low salary tempts a man to steal, why don't he only steal enough to make his salary respectable and then stop? No. Such a man is a thief and will remain so till he dies. Now sir, I will refer to the state of Pennsylvania where salaries used to be very low, and where they are not very high now. Where I remember the governor of that state only used to get, I think, $1,500 a year. Now I would ask the gentleman to show me a Dutchman in that state who ever stole a cent. I will take another instance. These school fund commissioners of whom I spoke charged upon their books for the services rendered. Each man charged just as he thought proper. These accounts went up for allowance. It was a subject of revision by the superintendent. The very men who charged the highest prices and got the most money, were the very school fund commissioners that stole the fund. Now, it seems to me the gentleman's rule will not work any way we can fix it, and, therefore I conclude it is unfounded. I am willing to say that the governor of this state shall have $4,000, and I think that is enough.

The CHAIRMAN. The question is on striking out "three" and inserting "six."

The motion was not agreed to.

The CHAIRMAN. The question recurs on the motion of the gentleman from Cass to strike out $3,000 and insert $2,500.

The motion was not agreed to.

Mr. BOYD. I move to insert $4,000.

Mr. CASSELL. I move to insert $5,000.

The motion of Mr. Cassell was not agreed to.

The convention divided on Mr. Boyd's motion when there appeared ayes, 30—noes, 13. So the motion to insert $4,000 was agreed to.

The CHAIRMAN. The question now is upon the section, as amended.

Mr. WILSON. I move that the salary of the treasurer shall be $3,000 instead of $2,500.

Mr. PARCHIN. I move as an amendment to make it $2,000.

Mr. WOOLWORTH. Mr. Chairman. I desire very briefly to submit to the committee one or two observations with respect to this particular salary. I had a conversation when coming down here with some gentlemen, in reference to the office of treasurer, and the proper manner of taking care of the funds of the state. He was a gentleman of large experience and by the business in which he was engaged was called upon to take charge of large sums of money. I asked him for information respecting this matter. He said come "do one of two things, either give a very small sum, or else a very large sum. Either course will secure a first rate man. If you give a very small sum then politicians and men who are not accustomed to the care and management of large sums of money will not desire the place, but it will be desired by banks and financial men, who will use the funds in their business. Then if you give a large salary that really is a salary to be proportioned to the duties connected with the position, give a sum which will secure the services of a responsible and accurate man."

We pursued this conversation and he developed to me an idea, which, at the proper time, it has been my purpose to explain to the convention. I was informed by him that it was the practice of many large cities to deposit their funds in the banks, or with individuals. This is the case with the city of Chicago, which deposits sums varying from half a million to two million dollars. The city receives proposals from indidividuals, and from corporations, to take these funds, giving back a certain sum, as interest. The person, or bank, who gives the largest interest gets the money, and the borrower then maks a deposit of United States bonds as security for this fund. The question comes up, is it wise, or expedient for us to adopt such a plan? If we do, then the salary of our treasurer may be smaller than if he will be required to take charge of the large sums of money belonging to the state. If I would make any distinction between them, I would make the salary of the treasurer less than any other officer. It is proposed to provide by the constitution that the actions of the treasurer shall be examined by one officer and the accounts adjusted by another. Thus a warrant on the treasurer shall be drawn by one officer and countersigned by another. If that plan were adopted, there would be no difficulty in keeping matters straight; the warrant would be drawn by the auditor and countersigned by the secretary of state and then go to the treasurer; then the treasurer would be little more than a book-keeper standing between the auditing officers of the treasury department and the disbursing officers. It would be impossible for me to say what the convention may do in respect to this plan for securing the treasury. I think that if the treasurer have charge of the state funds, two thousand dollars is quite small enough sum for the salary of this officer.

Mr. McCANN. Mr. President. Without proceeding to discuss what may, or may not be incorporated in the report of the committee on revenue and finance. I shall give my opinions and reasons for sustaining this amendment making the salary of the treasurer of the state $3,000 instead of $2,500, or any other sum. Gentlemen, I don't believe it was the intention of the intelligent men composing this committee to have the affairs of the treasury in such shape that while you pay your treasurer four hundred or five hundred dollars or even $3,000, as a salary, that double that amount, or ten times that amount may be used out of our state funds in private speculation. Any man who has a fair book-keeping experience, will bear me out in this; that our state treasurer's books, even as they are now kept by our honest state treasurer, do not properly show the condition of our finances. It is very easy for the books of that treasurer to be kept so that $50,000 of the funds of the state of Nebraska might be used by the treasurer. This sum, at six per cent interest, will make the sum of $3,000 yearly interest. Now, Mr. Chairman, I believe, that the matter which has been hinted at by my friend from Douglas (Mr. Woolworth) foreshadows a policy which will be adopted by the people of this state. If this is done, we should pay our treasurer such a salary as will pay a good and correct book-keeper, and I take it that $3,000 is small enough sum for that. Then you will have your funds to let to the bank or corporation, or book-keeper who can secure the same and pay the greatest interest for the use of it. I take it that if this policy is adopted by this state, we will not only secure our funds, but the interest also which will be added to the revenue of the state. I hope that the salary of the state treasurer will be put at $3,000.

Mr. KIRKPATRICK. Mr. Chairman. I hope this amendment to increase the salary of the state treasurer to $3,000 will not prevail. I think that the suggestion that the treasurer will not be the custodian of the state funds at all, is a good one. But why pay him $3,000 to do this clerical book-keeping? I am told by those acquainted with the duties of this office that there is more business done, more work done in the auditor's office than in the treasurer's. I think the auditor deserves the highest salary. This suggestion about the change in our financial system is a very important one, but why this officer should receive a salary of $3,000 when we propose to give the auditor, and the superintendent of public instruction but $2,000 each is more than I can understand.

The CHAIRMAN. The question recurs on inserting $2,000 instead of $2,500.

The amendment was not agreed to.

Mr. GRAY. Mr. Chairman. I move to strike out, in the last line $1,500 and insert $2,000. I agree with the remark made this morning as to the duties of the attorney general and perhaps that amount $2,000, would not be adequate to secure the service of a competent lawyer. If we are going to have this office in the state it should be something more than an ornament. It should be for the performance of some important duties and we ought to have a responsible lawyer, but we will never be able to get one for a small amount. If you leave the salary as it is, lower than that of any other officer, no responsible man will accept it.

Mr. STRICKLAND. Mr. Chairman. I move to amend by striking out $2,000 and inserting $2,500. I think the arguments of the gentleman are of considerable force. It takes at least five years good study to make a lawyer and several years of practice before he would be competent to fill such an office and I think he is worth more than that small amount if a lawyer is to be elected to fill this office, who has any pride, as a lawyer and a man ought to have, he will necessarily have to move here and spend most of his time here and he could not live on less than $2,500. I should not wonder if the humblest lawyer in our city but gets that much and is it to be supposed that a good lawyer will leave his business to come here for a less amount than he is making at home. I am in favor of giving more rather than less, just to support the dignity of the office.

Mr. KIRKPATRICK. Mr. Chairman. The main argument for giving these large salaries is to support the dignity of the office. I don't believe we need such an office at all, but when an attorney is needed we can hire one.

Mr. STRICKLAND. Now we come right to the question of dollars and cents. Why they paid one gentleman $500 for one night's work in getting up the impeachment articles. Why if we are to employ an attorney in every special case it will cost in the end far more than $2,500 a year, that would be leaking at the bung hole and saving at the spigot. Why, I used to think the attorney general was the mightest man on earth, and he should be to be the legal counsel of the state, he is the legal brains of the governor and he ought to be a man able to give proper legal advice. Who should such a man be? Some man who has no experience? No, sir. I apprehend that the man who fills this should have ability, for he will have to contend with giants in legal intellect. He should be a man that could take a whole corporation and shake the rights of the state out of it, if there be any sequestered there. I apprehend that the state should look well to it, that nobody should occupy that place unless they be men of ability and experience. Now, if it is true as has been stated that every thing that has been dug up here about the state troubles and losses is owing to the want of proper legal advice and I don't doubt it. Why there is the more necessity to secure a good man for this office, which can only be done by paying a good salary. I can see many things that ought to be done by the state's attorney now. Here is a body sitting as a deliberative body on the fundamental laws of the state, that has incidentally dug up this little matter of school lands. It is not the duty of this convention to investigate this matter, but it should be the duty of the attorney general, and there are several other things that I could refer to that have come under my observation where the attorney ought to set himself to work for the state. If we are to wipe this office out entirely, let it be done and then let us depend upon hunting up some one who can attend to this business for the state, but if we are to have the office, let us have the officer, who can perform the duties to the credit and safety of the state.

There is nobody particular to attend to anything, except it be a gentleman who is employed to prosecute some individual case. I think the office either ought to be abolished entirely, or else have such a salary that some sound lawyer, who will be a credit to the state and can handle these corporations will accept it. Unless we can I am in favor of striking it out entirely. $2.500 is not a considerable sum of money for an attorney. There is not a single gentleman of the bar who tends to respectability as an attorney, that can live on less than that. The distinguished honor is something, yet he ought to be paid for his services. I should be willing to pay the attorney general the same I would pay the supreme judge or the governor, and see that we had the best legal ability in the state regardless of politics, one who will assert the rights of government everywhere. Almost every attorney general of the United States is subject to close criticism, they work under a department learned in law, and are served right along with instructions in regard to their duty. My friend Mr. Woolworth adverted to the fact of Mr. Poppleton getting a salary of $10,000 a year, and I heard one of the highest officers of that road make the remark that they would not lose his services for $25,000. Here is a corporation running through the state, and there is no question affecting that road, but what Mr. Poppleton is there with his strength and power. You remember one question wherein one county had a claim of $30,000 against that road.

What did they do? Got a gentleman of ability and paid him $4,000 or $5,000. It is an actual necessity. Let us make the attorney general a respectable office and the people will nominate a man who is able to fill the bill with ability. If I had my way I would have it $5,000.

Mr. ESTABROOK. Mr. Chairman. I did not intend to say anything more on the question of salaries, but I esteem it my duty to make a remark or two in regard to the salary of this officer, and what I regard to be his duties. In the first place let us see what other officers of smaller character in a somewhat similar category have received in this state. They used in the counties to employ, each county for itself sometimes, for the duties of prosecuting such offenses as arose in the counties. They found that did not secure the services of very able men, in some counties there were no lawyers at all. While it did not secure the services of able men, it did cost more than would pay a liberal salary. In 1867 the legislature passed a law creating the office of district attorney whose duty it is simply to go to the courts and prosecute before the grand juries such offences as may arise, and it is his duty to give advice to county commissioners and the like. For that office the state pays $1,500. The City of Omaha was authorized to employ a city attorney; the duties of that officer were somewhat of a kindred character of a district attorney. The salary of that officer and which the city of Omaha paid was $1,000 a year. But for the attorney general of the state of Nebraska you would pay but $1,000 a year. It is suggested by the gentleman from Cass (Mr. Kirkpatrick) that the reason why they were thus liberal in raising it from $1,000 to $1,500 was because of the dignity somewhat, but because they were satisfied the officer had very little to do, that it was a sinecure, a figure head. I think perhaps the labor of the office has not commenced in this state. This leads me to call attention to what I deem to be the duties of that officer if we provide for him. In the first place many years ago, in the capacity of private practioner at the bar, I was sometimes engaged defending or prosecuting the claims of persons who had possession of school lands. It is well known that there is scarcely an important town in this entire state that is not built upon a portion of a school section or in the immediate vicinity. Your city (to Mr. Campbell) is built upon a school section. A school section runs through and into the very heart of the city of Omaha today, which would bring at least $50,000 to the school fund to day as hard as times are. Perhaps some portion of Nebraska City was settled upon before the lines were laid. If not no man could acquire any kind of right to it. The only method by which an individual could have acquired a right to a school section was to have lived upon it before lines were run in the field. The law was made so as to extend the right to those who in good faith went out upon the new land, had settled down before the lines were run, not knowing about the school lands, thus giving them the same privilege as other land. There is school land in the immediate vicinity of Plattsmouth, Rock Bluff, and indeed I think there is scarcely an important town in the entire state of Nebraska.

Mr. KIRKPATRICK. There is none within three miles of Plattsmouth.

Mr. ESTABROOK. The school committee have learned that none of these sections have been confirmed, so that so far as the state of Nebraska is concerned today, if she does not own these sections she owns nothing, and so far as the law is concerned, unless there has been something lost by acquiescing in the fraud, these lands belong to the state of Nebraska today. Now then, is it necessary I should turn attention to the other subject, as to what shall be the duty of the law officer of the state of Nebraska if inquiry is to be made into this? If inquiry is to be made into this question, whether all these cases of the most valuable lands in the state as to whether they are still the property of the state or not, if not, if some other sections have been selected in lieu thereof. Then let me call attention to one other little matter that may by possibility engage the attention of the law officer of this state, a matter that was developed in the legal procedure a little while ago. That was as to the manner in which a portion of the 500,000 acres of land appropriated to the state was taken and given to men from another state; and, so far as the form of conveyance was concerned, that land passed to a company every one of whom resided in the state of Iowa or some other state. A representative of that company came here and sought to take that land, and did get it, and I think they have it now. It is my opinion, and as I give it for nothing it need not be set down for a positive rule, that that is just as much the property of the state of Nebraska today as it ever was. If this be so, and you make no provision concerning an attorney general, either as to his duties or salary, and the proposition should be made by this convention, it having the power, to go out and make an effort to secure to the state that which, in right, belongs to it; and you should look around to see who should be your representative in the courts, what would you do? I think you would be very careful as to the man you would select. You would select him on account of his qualities as a lawyer. You would look for the very best man that could be found. Suppose his duties should call him to come in contact with the interests of the Union Pacific R. R. Co., who do you propose to send out to meet the man who is the lawyer of that company; the man who is regarded all over the United States as a great intellectual giant? Do you propose to go with a sling as did David? He acted upon inspiration. Unless there is something of a Divine interposition it would take something more than a figure to cope with Mr. A. J. Poppleton. You set your man to work. He goes on and reclaims the land of this state which has been improperly and illegally taken from it. Now, the laborer is worthy of his hire. What do you propose to pay him? Let it come before a court and jury, and it shall turn upon the naked question of what has been recovered from the Iowa railroad company, and what would you pay him? And you call upon the entire bar of the state to give their idea. I undertake to say the sum shall not fall a dollar short of $5,000. You may call upon every lawyer in the whole northwestern territory, and if we pay him for his services it shall not be a cent less than $5,000. Well, then, if he shall contend against all these giants, and bring all his legal power and knowledge to bear, and he is successful, why it is cheap at $10,000 when you get through. And if you fix his salary below that of any other state officer you do an injustice, unless you insert, in some other place a provision to furnish him assistance. Having thus briefly alluded to these things, I will only simply suggest what there should be for this officer to do besides his other duties, and prosecuting in every criminal case which should come before the supreme court. You could not hire any lawyer to go out from his ordinary practice finding his authorities in ordinary law books and prosecute these cases and it should not be less than $1,000.

Mr. CAMPBELL. I was rather inclined to think at first that this salary should be raised, but since the two last gentlemen spoke I am satisfied now that we should have no attorney general at all. Listen at the history of the attorney generals in this state and territory. To be sure Gen. Estabrook talks about these things very liberally; and he came down to our town (Nebraska City) and instigated some private individual to file a caveat against forty acres of land I had the title to; and instead of prosecuting it through to its completion the state had to employ a Mr. Washington of Washingtion City, and pay him, I think $500 to get that forty acres back. Our attorney general did not do us any good then and I would like to know what good our attorney generals have done us since that time. They have let land be taken from us by the hundreds of sections at a time; did not even inform the legislature last winter that the land office had no right to fees in entering this 90,000 acres of land, which was to go to the Agricultural college. It seems that the whole legislature was ignorant of that fact; must have been, because they appropriated $800 to pay for entering. I am satisfied Mr. Chairman, that we do not need this fellow at all, never did, and never expect to. Now, when a man has anything to do in the law he selects a good lawyer and pays him well; and when he has no use for him he don't have anything to pay. I move that wherever the words "attorney general" appears it shall be stricken out.

Mr. ESTABROOK. I second the motion. It is the best idea yet.

Mr. LAKE. Mr. Chairman. I hope that the motion will not prevail. We have seen the result of leaving the constitution without providing for this office. Notwithstanding it has been left out of the constitution the legislature has provided for one. I prefer it should be an office recognized by the constitution, and with those safe guards thrown around it that it requires. The office should be created and provision made for the election of a suitable person and every reasonable compensation for performing the duties of that office. I do not altogether agree to the ideas that have been advanced in respect to the amount of the salary. It is well understood that the attorney general often has the power to earn through his profession quite a sum of money aside from that which he gets from the state. That is, if he be a lawyer of sufficient reputation to fill the office as he ought to fill it. Now it is said that you must pay a man so as to completely make good for the losses to him sustained, perchance in breaking up his business in another portion of the state and removing to the capital. I do not subscribe to that proposition. He will willingly come to the capital, where there is much business constantly accumulating; and it will be a good thing for him. He will necessarily accumulate quite an amount of professional business. Many an attorney, who has acquired perhaps quite a competence at the bar, who is in good standing at the bar, would be willing, for the sake of the honors of the position, together with a reasonable compensation he receives from the state together with the amount he can make in the legitimate prosecution of the business of his profession, will willingly come to the capital for the time being, and perhaps make it his permanent home. But the state can be relieved of that embarassment by selecting gentlemen in the immediate vicinity of the capital. There are plenty of gentlemen here to fill the positions, who will not have to remove to the state capital. So gentlemen, of the committee, and Mr. Chairman, let us provide for this officer, which we are certain the legislature will secure. It will be one of the first things the legislature will do on their first assembling here to elect that officer and provide for his maintenance. I trust he will be retained as one of the state officers.

Mr. HASCALL. Mr. Chairman. I am in favor of retaining the attorney general, and think we ought to pay him at least $2,000 per year. I think if the state has legal business to transact, it is more proper for it to be prosecuted by the attorney general of the state than for advice to be given by some man hired by the state, and I certainly am opposed to paying an inadequate compensation. I am very glad we are to pay our governor a reasonable compensation. I am willing to pursue the same course in regard to all the other state officers. I am aware that this official might be dispensed with and a states attorney hired, as occasion might require. This office under the present management is not a constitutional provision and there is not the dignity and responsibility connected with it which might be desired and the compensation is such that it belittles the position. We propose now to place the state upon a higher position. My friend from Otoe (Mr. Campbell) was in favor of the office of attorney general being retained until reference was made to the state securing certain school lands, and from that time he has opposed it because he was afraid that some of these lands might be secured to the state. I don't say that my friend lives upon school land, but it looks very strange that he should change just at this suggestion. I will not judge the gentleman harshly, for I think he wants the state to get its dues. He refers to the "Solons" in the last legislature. I don't know that we had any "Solons" in the last legislature. I have not discovered any "Solons" in this convention. Perhaps the "Solons" were in that territorial legislature, (and perhaps my friend from Otoe (Mr. Campbell) was a member) in which they passed an act relating to a mule and its owner. They got the business somewhat mixed and finally got the mule where the man should have been, and vice versa. (Laughter.) I supposed that the men composing our last legislature were a fair average sample of the men of this state. The fact that we made an appropriation to secure the state's title to our agricultural lands has been alluded to. The matter came up about the last of the session and as the appropriation called for less than $1,000, and the object was to secure our title to these lands, in the hurry of closing up the business of the session, the matter was not inquired into as closely as it would have been under other circumstances, and we made provision that only so much of the appropriation as would be required, should be used.

I think this question with regard to the salaries of our officers has been ably discussed. I think $3,000 is a reasonable compensation to pay these officers and I think the state will receive about three times that amount each year, if we secure able and competent men.

Mr. TOWLE. Mr. Chairman. I believe we have already created two boards, in which the attorney general is made a member. Now if we dispense with the services of the attorney general, we shall disarrange to a considerable extent, the arrangments already made. It has been stated here that the value of our state lands amounts to $50,000,000. Now, Mr. Chairman if you owned all the real and personal property within the limits of the state of Nebraska —if you owned ninety thousand acres of land in the best portion of the state, would you not secure the best legal talent to be had to look after and protect your rights? The gentleman from Otoe moves to strike out the position altogether-the question then is, how shall we employ a lawyer to look after our rights, and business of the state? If it is left in the hands of the governor, some political hack will be employed. I tell you, Mr. Chairman, it is my opinion we should pay a high salary and then we will find a good man who will take the position. You will find the very best legal talent in the state seeking the position. I believe there are questions arising in the departments here, which daily and hourly require the advice and opinion of an attorney general. It requires a man who will be able to give an opinion upon the spur of the moment.

It is the duty of the attorney gene

ral to furnish to the several state officers legal counsel on points arising in the performance of their duties so as to prevent difficulties, and propose such remedies as are necessary for difficulties. For these reasons I am not in favor of abolishing the office, but I am in favor of raising the salary.

Mr. MASON. Mr. Chairman. I regret exceedingly that it should be deemed necessary to reflect upon the action of any department that has preceded us, and I regret further, that it should be deemed necessary to defend the public acts of any one; public acts should stand as their own defenders. The immediate question before the committee is that we strike out all contained in the section relative to the office of attorney general, to that question I propose to address myself for a single moment. The true question is then, what is the best way to provide for the state that legal counsel which is necessary? Shall we leave it open to the legislature or shall we provide a department, and an attorney general for the [ey.e] on the business of the state for state who shall have charge of that department, and keep track of its business and watchful and diligent all times? My opinion is that we need an attorney not for every particular case, but for every day. The different departments need legal advice every day. Think for a single moment of the condition of leaving the state without a law officer. I differ from my colleague Mr. Campbell. I think from the state of facts referred to by the gentleman from Douglas (Mr. Estabrook) that the state needs the best of lawyers to look after her interests. Not so much for correcting the faults after they occur, as for giving that advice which will save the state from those difficulties. An attorney for this state such as we ought to have, would save to the state not less than $60,000 and not over-work himself then, not so much in digging up what has been lost, as in giving wise counsel to the various departments of the state, and establishing wise forms so as to secure for the future as well as correcting the faults of the past, then , sir, I may conclude that the motion to strike out should not prevail. Then, sir, as to the salary I will say that I don't think $2,000 is enough, but $2,500 might be sufficient, and for these reasons, Mr. Chairman, I hope the motion to strike out will not prevail, and I hope the committee may agree upon $2,500. And as I took occasion to say this morning, if gentlemen will reflect for a single moment, whoever made a cent by hiring cheap help. If he is here, I would like to have him rise and tell it. I have had something to do with employing men for taking care of my own affairs. I never hired a cheap man but what I paid double what it would cost to pay a faithful, trustworthy man. This thing of capacity is an article of merchandise in the market, it is for sale, for hire and the biggest price takes it and in this day and age of the world, a day and age which may be characterized as a money age of the world. Most emphatically men no longer work for glory. The statesman is no longer heard in the halls of legislature leading onward in the pathway of progress simply for glory, and the philosopher is no longer found in his study simply for the glory of it. It is emphatically an age of money, because in this age money is power, and if we have competent, energetic, faithful and trustworthy officers we must pay them. I think the amendment proposed is within reasonable bounds and for that reason I trust the proposition to strike out will not prevail, and that the amendment proposed will prevail.

The motion to strike out was not agreed to.

The CHAIRMAN. The question recurs on the motion to insert $2,500 instead of $1,500.

The motion was agreed to.

Mr. BOYD. Mr. Chairman: I offer as an amendment to the section to follow at the close of the section, "provided at the expiration of five years, and every five years thereafter the legislature may by general law, readjust the said salaries, but the salaries of the officers named in the section shall not be increased or diminished during their official term."

I am not in favor of putting a clause in the constitution fixing the salaries as long as this constitution shall last. I do not think we know what the salaries should be in five or ten years. I hope the amendment will prevail.

Mr. ESTABROOK. It seems to me that the last clause is needless. I move to strike out the last clause. The object is that one individual may not so manipulate a legislative body as to secure a higher salary for himself.

Mr. BOYD. Mr. Chairman. The reason I worded it as I did is, that the end of five years may come when some of these officers are just elected and it would be hard for them to have their salaries diminished.

Mr. MASON. Mr. Chairman. It seems to me the amendment to the amendment ought not to prevail, for the very cogent reason suggested by the gentleman from Douglas (Mr. Boyd), that this readjustment might take place in the middle of a term of the various officers, or at the commencement. The readjustment takes place every five years, but does not apply to those in office, nor during their term of office but to their successors who may be [elected] thereafter, and I think that after a little reflection the gentleman from Douglas (Mr. Estabrook) will withdraw his amendment for this reason. It then makes the salary the same that is provided by law, without the power of the legislature to change.

Mr. ESTABROOK. It is not a matter I am captious about. It seems to present the idea that the legislative bodies which come hereafter, are those who can be worked upon to raise the salaries of officers. I think we will not have such.

Mr. WOOLWORTH. Mr. Chairman. This is the very amendment to which I referred in some of my remarks this morning. There might be fluctuations in the value of money which we cannot foresee. I think the proviso presented by Mr. Boyd will be adopted as it was presented.

by him.

The CHAIRMAN. The question is on the amendment of Mr. Estabrook.

The amendment was not agreed to.

Mr. MOORE. Mr. Chairman. I think it would be well to amend the first line of the proviso. I move to add after the words "expiration of five years" the words "from the adoption of this constitution."

The motion was agreed to.

The CHAIRMAN. The question now is on the motion of the gentleman from Douglas (Mr. Boyd).

The motion was agreed to.

Mr. HASCALL. Now that we have stricken out $1,500 and inserted $2,500 in the case of the attorney general, we can embody the two sections in one. I move to make it read as follows: "The salary of the treasurer and attorney general shall each be $2,500."

Mr. ROBINSON. I move to strike out the second word "salary" in seventh line and make it "salaries."

The CHAIRMAN. I will make that alteration. The question is on the motion of the gentleman from Douglas (Mr. Hascall).

The motion was agreed to.

Mr. WOOLWORTH. Mr. Chairman. I move the adoption of the section.

The motion was agreed to.

Next the Chairman read the section as follows:

Sec. 24. An office is a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed. An employment is an agency, for a temporary purpose, which ceases when that purpose is accomplished.

The 24th section was adopted.

The Chairman read the next section as follows:

Sec. 25. All civil officers, except members of the general assembly and such inferior officers as may be by law exempted, shall, before they enter the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of Nebraska, and will faithfully discharge the duties of senator (or representative) according to the best of my ability; and that I have not, knowingly or intentionally, paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act."

This oath shall be administered by a judge of the supreme or district court, and the secretary of state shall file and record the oath, subscribed by each officer. Any officer who shall refuse to take the oath herein prescribed, shall forfeit his office and after conviction of having sworn falsely to, or of violating his said oath, shall forfeit his office, and shall be disqualified from holding any office of trust or profit in this state.

No other oath, declaration or test shall be required as a qualification.

Mr. KIRKPATRICK. It seems to me there is something muddling in this section, which I would call the attention of the Chairman of the committee to. "All civil officers, except members of the general assembly and such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation, etc." I would like the gentleman to explain.

Mr. WOOLWORTH. The three words "senator or representative" should be stricken out, and a blank left there for whatever office it may be required. I therefore move that the section be amended by striking out the words "senator or representative" in the fifth line, or the second line of the oath, leaving a blank in the place for thereof.

Mr. TOWLE. I would suggest to the Chairman that that is not the difficulty. It says "all civil officers" and then goes on, and this oath applies directly to them as well as others.

Mr. WOOLWORTH. Yes, that is very true. Nevertheless, I believe in leaving the oath just as it stands. I believe the last clause of the oath is just as necessary as any other part of it. That is to say, I would make these state officers so that they would not use their influence in any way to affect the action of the legislature in passing a bill, resolution or appropriation. Those state officers would not be induced by any consideration to bring their official influence to bear upon the legislature at all, and I would simply leave these words as they stand. "And for any other official act" is certainly broad enough to cover all.

Mr. ROBINSON. I move to strike out the words "senator or representative" and insert "of the office to which I have been chosen."

Mr. ESTABROOK. Mr. Chairman. The latter part of this oath commends itself to me. It is something new. I like many things where they offer any good or benefit. But there is this objection to it at least—it is not germane to the article in which it is found. I would ask you, sir, as the chairman of the committee of legislation whether the oath prescribed for the members of the legislature is not prescribed in the article on the is prescribed.

The CHAIRMAN. It is.

Mr. ESTABROOK. It is proposed that in the executive article the oath is prescribed.

Mr. WOOLWORTH. It says "except members of the legislature."

Mr. ESTABROOK. I think it has application to members of the legislature and anything else. Commencing at the third line it says, "and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation"—that has reference directly to the action of a member of the legislature—"or for any other official act;" and that seems to be the whole point there is in it. Now, I will ask the Chairman of the committee if it does not refer exclusively to the action of the legislature?

Mr. WOOLWORTH. I should say it did, as it stands. If you will amend but one thing at a time you will reach that question after a while. If you will adopt the motion I have made to strike out the words "senator or representative" and leave a blank. Then go down to the bottom part of the oath and strike out the word "vote or."

Mr. MANDERSON. Allow me to suggest that these civil officers are members of the different boards or will be, and as members of such boards they will have some appropriations. Therefore, it seems to me it is better the words "vote or" should be left in.

Mr. ROBINSON. The lieutenant-governor has a vote.

Mr. ESTABROOK. Let me enquire if it is a proposition that the auditor shall swear before he enters upon his office, that he will take no bribe, etc., for any vote he may give.

Mr. WOOLWORTH. Yes, Because he is a member of some board and will be required to vote.

Mr. ESTABROOK. Mr. Chairman. If the committee will indulge me a moment, I think it is the oath prescribed in the Illinois constitution.

"I do solemly swear, or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of——————according to the best of my ability."

That is the way the Illinois constitution reads. I move that this oath be substituted for the oath in the printed bill.

Mr. PHILPOTT. Mr. Chairman. I would ask the gentleman if he will insert the words "and impartially" after the word "faithfully".

Mr. ESTABROOK. Yes sir.

The CHAIRMAN. Gentlemen. The question is upon the adoption of the substitute. The committee divided and the substitute was agreed to.

Mr. KIRKPATRICK. Mr. Chairman. I desire to call the attention of the committee to another matter. In the fourth line, it is provided that this oath shall be administered by the judge of the supreme and district courts. I think any officer qualified to administer an oath, should administer this oath.

Mr. STRICKLAND. I move that we strike out the words "a judge of the supreme or district court," and substitute the words, "any person authorized to administer an oath."

Mr. ESTABROOK. Mr. Chairman. I move to strike out the 4th, 5th, 6th, 7th and 8th lines. That leaves it just as it is in the Illinois constitution.

Mr. WOOLWORTH. Mr. Chairman. These five lines are certainly of no further use.

Mr. STRICKLAND. I withdraw my motion.

Mr. LAKE. I would like to know of the chairman of the executive committee whether it is intended to leave the article without any provision for the filing and recording of the oath. If this is the case, perhaps it is well enough to strike this out entirely.

Mr. WOOLWORTH. Perhaps it is well enough to leave that.

Mr. ROBINSON. Mr. Chairman. I move that all that portion of the 4th, 5th, 6th 7th and 8th lines be stricken out except from the word "court" in the fourth line to the word "any" in the 5th line. It will then read, "And the secretary of state shall file and record the oath subscribed to by each officer."

Mr. LAKE. As I understand it, Sec. 25 relates to all civil officers except members of the legislature. Now is it intended by this committee to require every civil officer in this state to keep a record of the oaths administered by them and send to the capital of the state? If this relates to all civil officers in the state then I am opposed to it; because there are a great many civil officers whose oath of office should be kept on record in the county where they hold their office. If the section can be so modified as to relate only to the officers provided for in this constitution, then I am in favor of it.

Mr. ESTABROOK. I think it is safe to leave it as it is left in the Illinois constitution.

Mr. PRICE. Mr. Chairman. I will make a motion that the committee do now rise, and report this section twenty-five, with the recommendation that it be referred to its appropriate committee.

Mr. ESTABROOK. Mr. Chairman. I presume the only object in the committee making this report and departing from the original article in the Illinois constitution is to engraft this additional oath, otherwise I presume that they would be content to allow the whole matter to remain just as it was in the Illinois constitution.

Mr. ROBINSON. Mr. Chairman. I would like to amend my amendment by adding after the word "officer" the words "named in the first section of this article."

Mr. LAKE. Mr. Chairman. I would prefer myself to leave this matter entirely to the legislature to provide where this shall be recorded. If we make no provision of this kind it will be left there as it is in the Illinois constitution. We have prescribed the oath as in the Illinois constitution and why not strike out the rest of the section.

Mr. ROBINSON. I withdraw my amendment.

The CHAIRMAN. The question is on striking out all from the beginning of the fourth line to the end of the eighth line.

The motion was agreed to.

Mr. NEWSOM. Mr. Chairman. I desire to amend the oath as follows: by adding the words "and that I have not directly or indirectly paid or contributed anything or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and I have not accepted nor will I accept or receive directly or indirectly any money or other valuable thing, from any corporation, company or person, for any official act."

Mr HASCALL. Mr. Chairman. It seems to me we have passed upon this question. I raise that as a point of order.

Mr. WOOLWORTH. Mr. Chairman. I think the committee has expressed itself that they think the oath should be the usual oath of office.

Mr. NEWSOM. Mr. Chairman. I have spoken to the mover of that amendment—

Mr. HASCALL. I call the gentleman to order. I have raised a point of order on which I ask a ruling of the chair.

The CHAIRMAN. The chair is of the opinion that the change in the phraseology makes it a different motion and that it is in order.

Mr. WOOLWORTH. If we add that, Mr. Chairman, I shall be in favor of restoring that part of the section which has just been stricken out.

Mr. MANDERSON. Mr. Chairman. I think that many who voted for the substitute offered by my colleague (Mr. Estabrook), voted for the purpose of striking it out because there was something in it objectionable, the amendment as I understand it leaves out that objectionable part in the last line, leaving only the word "any official act." this motion receives my hearty support. It may be objected that you cannot make a man honest by administering an oath to him. My reply would be that you cannot hurt him. I think in regard to that like the old man in the south, when he was called upon by a union officer to take the oath to support the government. "Well," said he, "I have taken it about fifty times already, but I can take it again for I feel better every time I take it."

Mr. ESTABROOK. Mr. Chairman. I have an amendment to the amendment. I will state before you read it, that if we are now approaching the millennium we ought to make this perfect in every particular.

The Chairman read the amendment as follows: To add to the amendment the words "nor have I, to my knowledge, committed a breach of any of the provisions of the criminal code; nor broken any of the ten commandments." (Laughter.)

Mr. MASON. In the consideration of the amendment, I propose to consider the original as well as the amendment offered by the gentleman from Douglas (Mr. Estabrook.) It sometimes becomes necessary, when one stands paralyzed in the presence of a just proposition, to attempt to avoid its effects by heaping upon it ridicule. Now I will not do this in the amendment proposed by the gentleman from Otoe (Mr. Newsom) and had my attention been directed to this matter when the motion to strike out was made I should have resisted it, and why? Not sir, that I believe the millennium is here, but for the reason that this original amendment is sought to obviate the evil that permeates society; every gentleman in this convention is cognizant of, and it is useless to shut our eyes to the fact that in elections as they are ordinarily conducted, there are means used directly or indirectly, either by calling into requisition the grog-shops, or some other questionable means to secure a larger vote. It was against this evil I apprehend that the committee prepared this amendment, and as has been well said by the gentleman from Douglas who sustains the amendment offered by Mr. Newsom, "Who is to be hurt by it?" Let me inquire of the gentlemen of this convention if it is safe, if it is just to this state, to turn the keeping of its ark and covenant over to those, who, by the questionable means of bribery or fraud have secured the custody and keeping of this sacred trust? All that this oath says it that this convention and the people when they adopt this constitution say that we will not vote this sacred trust to the keeping of one who to secure the position is willing to exert all the questionable means of influencing voters by money or promises. Why sir, in the consideration of a question that came before this convention the other day, I am not sure but it was the gentleman from Douglas who alluded to the matter of the election of various officers through the power and patronage of those in office and the securing to their supporters official position; and it is at this growing evil that permeates and ramifies the whole body politic, that this original amendment was offered, and that the original report of the committee was made. I am not particular what language is used to cover this case, I care not whether it be the language used in the report of the committee, or whether it be that suggested by the gentleman who moves the amendment. But sir, while there may be among the ten commandments some that my friend in his earlier day may have trespassed upon a little, it is not too much to ask him to say that he has not by any means suggested in this oath the words "debauched or attempted to debauch any electors at the polls." It is for these reasons I regret that by ridicule it was sought to paralyze those who in good faith, would so far as in them lie, redeem this state and the body politic from this questionable mode of electioneering. Now let us consider this oath in detail. I desire to call the attention of the committee to the amendment, and then I desire to ask of this committee what there is in it that should cause any right-minded man to shudder at retaining this oath. "And that I have not, directly or indirectly influenced any vote at the election at which I was chosen to fill said office." This is the first proposition. Now is it just, is it right to entrust the keeping of the sacred treasury of the school fund, the keeping of the ark and covenant of justice, or invest the chief executive with his authority if he in procuring the position has debauched electors by corrupt promises or money?

By voting down this amendment we negative the idea, and say, it is right to resort to these means. The first oath simply is "that I have not directly or indirectly used money or promises to secure the position to which I am elected." Why sir, I have often thought that we might be approaching the millennium in government affairs if this provision was faithfully carried out and written upon the hearts of men that participate in the elective franchise. Would it not do much to bring about the day when corruption should cease, and men meet in deliberative bodies qualified from their culture, from their character, their adherence to principle, instead of taking those whose capacity was greatest in fulfilling promises to find places for applicants for office? It seems to me this ought to commend itself to the judgment of my friend from Douglas who offered the amendment to the amendment. The one sir, who has stood on the very watch-towers of the state sounding the alarm of danger to other men. How is it today? He will let a man use these corrupt influences to obtain position,

The second clause of the other is, "And I have not accepted, nor will I accept or receive directly or indirectly any money or any valuable thing from any corporation, company or person for any official act." When we were considering the pardoning power, some gentleman on my right suggested several cases in other states where pardons were bought and sold. What do we say? We simply require the office holder to swear that he will do no such thing, and is this an unreasonable requisition? It seems to me it is founded in the very principles of christianity, as well as those of free government. It seems to me it takes its root and gathers its whole strength and vitality in the principles of christian society. These are only two points to which the office holder is required to swear in the original amendment. Now let us consider the additional. "Nor have I to my knowledge, committed a breach of any provision of the criminal code, nor broken any one of the ten commandments." Now sir, I do not know that I am very much opposed to this addition as a matter of principle, except that I apprehend there are but few men that run for office, but that may misrepresent the truth if they do not tell a lie, and it might be going rather too far to require such persons to take that oath. The reason I oppose the provision of the amendment to the amendment is that it is seemingly to cast a slur at the original. Now sir, I dislike to take up the time of the committee, but I simply call attention to the various cases cited when this provision was incorporated in the Illinois constitution; and when we come to the legislative article I hope this oath will be required of every legislator. If required of every legislator, why not require it of every other officer? Why sir, when it is said in this day that legislators are susceptible of corruption, why not take this precaution? I have heard it said that an ounce of preventative is worth more than a pound of cure, that a warning to flee from danger is worth all you can do after the injuries fasten themselves on the body politic. It is not that I desire to be at all captious in this matter, but it is that I believe that the proposed oath would accomplish much good. Yes sir, it is the terrors of the law that do more to protect society than its punishment. If it was only a vindictatory penalty that enforced its mission, great indeed would be the number of its violators, but most men see and have learned to see in America, (and that is why it is said we have the best government in the world,) because the people inquire what is the law, and by the law abide. And if this provission passes, men running for office will see it written in the constitution and will stop short of a resort to means that they have heretofore used to accomplish these ends. It seems to me that we ought to adopt one or the other of these provisions. For my own part I like the language and the provision reported by the committee best, and had I not been absent and my attention diverted to some other matter, I should have presented these views much sooner. I trust gentlemen you will reflect and simply see that the person is required only to swear he has not bribed an elector and not used his position corruptly. What is there here that we should not incorporate in the fundamental law of the state? It seems to me we ought in justice to ourselves, to incorporate this amendment, and I hope it may prevail, or if not the amendment itself, then the original words in some modified form.

Mr. STRICKLAND. I am in favor of the amendment of the gentleman from Otoe (Mr. Newsom) because it is better worded. I think any gentleman could take that oath. What would a man be worth that would not take it?

Mr. ESTABROOK. If an individual sufficiently corrupt to use bribery to commit breaches of the criminal code as a means by which he could acquire the tenure of his office, do you think for a moment he would hesitate to take that oath? Now as a point laid down in the law books, it is deemed impolitic and wrong in practice to multiply oaths where there is no necessity for it. And I would respond to the interrogatory of my friend on my left (Mr. Manderson), and the gentleman from Otoe —what harm it would do. I reply that it does very much harm; and that to require an individual to take an oath where there is no need, a mere matter of form, it is wrong. Why, sir, are bribery and the little matters brought under the provision of this oath, the only corrupt methods by which a party gains office? No, sir. I mean to say the most corrupt method is that which is the subornation of the multitude of whiskey sellers that are brought into use. Now I ask my friend from Otoe, have you grown so degenerate as to have an individual stand up and swear he has not broken the ten commandments? Well, advocate the measure which shall let a person come in under a suspicion simply.

Mr. MASON. Suppose that latter clause were added, would I simply vote for you for attorney general?

Mr. ESTABROOK. It would answer very well for a guide board in the road to morality. But I fear he would not stop to enquire into the means used for his election. Nor do I think to say that he would hesitate to take the oath. He would find some place in his conscience to hide behind, some mental reservation, to enable him to take the oath. Here is my objection, that it multiplies needlessly the oaths to be taken, and the official oath is nothing at all. If you want a public sentiment that shall regard the oath as a small affair, make provision that it shall only be administered in the mere transactions of life. Not to multiply it at every corner; but have it only in such cases where it is absolutely necessary and the importance and magnitude of the occasion shall demand it. But if it must pass, let us, for God's sake, have the entire criminal code embraced.

Mr. TOWLE. Will the gentleman inform us what the ten commandments are?

Mr. WOOLWORTH. The oath in the Illinois constitution met my approval in the committee. I did not at that time say anything in the defense of the oath as reported; nor would I give anything for the oath as now proposed. I would not give anything for it at all, unless the committee and the convention will give back and restore the five lines following. That is to say, I do not think the oath will have any particular value unless it shall be recorded in the proper office of the state, where it can be examined by all men, and the person who takes it falsely and corruptly shall be chargeable with the consequence of the commission of the crime of perjury. If we can go back and restore the oath reported by the committee, modified, perhaps wisely and very appropriately as now proposed, and it has attached to it the consequences that are prescribed in the five following lines, then I am think, we will do just right. As far as this appendix goes, something about the ten commandments. I suppose the gentleman meant that for a joke. I do not suppose he ever meant it as a serious matter. It is too absurd to be worthy of talk. Let us see what is the argument he puts to us against attaching to the usual oath of office, the words proposed by the gentleman from Otoe. He says it is because he does not want to have oaths taken upon every trivial occasion. Now that argument proves too much. If that is sound strike the whole oath out, if it be a frivolous occasion when the chief executive of this state stands up before the representatives of the people in the legislature and before the people of the state, and takes an oath faithfully to discharge the duties of his office, and swears also that he has not obtained this position by corrupt measures, and that he will not use the power entrusted to him, corruptly; if that is a trivial occasion then, tell me what a grave and solemn occasion is. If the day that comes around every two years, when the representatives are assembled in this building, and the officers are to take their oath of office is a trivial occasion, then dispense with all the usual oaths of office as well as the words intended to be added. If that is a trivial occasion, why then let these men come up and take possession of their offices without ceremony, without oath of anybody to mark the event and the occasion. No, gentlemen we all know that it is not a trivial thing. We all know that the oath is a solemn oath resting upon and binding upon the conscience; and that the man who takes it, and knowingly perverts and violates it is morally guilty of perjury—I was going to say guilty of treason. And well I may say guilty of high treason. Now, strike the whole thing out, or accept the proposition that it is not a trivial thing. Then, when he does swear he has not got his position by corrupt measures, and that he will not pervert the power entrusted to him, let the oath be regarded. And if he shall violate that oath hereafter let him be excluded longer from the seat he is not worthy to occupy. Then something worthy of the occasion, then something worthy of the man will occur. I am in favor of the amendment. It relieves the oath as separated by the committee from some trivial objections made to it. It restores the substance of it. Then I hope the committee will restore the other sentences.

Mr. GRIGGS. Mr. Chairman. I am opposed to the amendment. I don't expect to make a speech upon this question, but simply state my views, believing that the oath, as found in the Illinois constitution is sufficient. I believe if a man stand up and hold up his hand and solemnly swear to discharge the duties of his office to the best of his ability, I believe that is all he could do if he takes all the "iron clad" oaths, any gentleman in this convention could make. I don't believe that honest men will be any the more honest after the taking of such an oath, nor will a dishonest man be made honest by it. I believe if he is corrupt enough to bribe, he will find some way to escape the penalties of the oath you propose. I don't believe that the addition to the amendment as proposed by the gentleman from Otoe (Mr. Mason) will secure honest officers. I am opposed to this amendment because I don't believe that will accomplish any good.

Mr. SPRAGUE. Mr. Chairman. If we were to make a choice between these two alone, then I don't know that I can make much of a choice, but if we re-consider what we have stricken out so that the section might be different, then I would be in favor of the amendment. If the amendment is adopted, and we reinstate what we have stricken out, then I can see that a man violating the oath, would forfeit his office and be disqualified from holding office in this state for all time to come. Hence I hope that the amendment will prevail, and that the portion we have stricken out will be reinstated.

Mr. ESTABROOK. Mr. Chairman. I am afraid, sir, that if the amendment should prevail, we would have no officers. I ask leave to withdraw my motion.

The CHAIRMAN. The question now is upon the original amendment.

Mr. THOMAS. Mr. Chairman. I desire to say only a few words. A short time ago, I voted against the section as originally reported. I am in favor of the section the gentleman from Otoe has proposed, because I believe it fills the bill. As now qualified by the gentleman from Otoe, the oath is also proper for the officers of the state. I don't see any impropriety of having the executive take an oath that he will not bribe voters, If it is good that the members of the legislature should take this oath, why should not the executive officers of the state take it also. I agree with the chairman of the committee, that if this oath is reconsidered it would be useless to have the executive take this oath unless there is a penalty attached.

Mr. PHILPOTT. Mr. Chairman. I vote for the amendment which has been adopted by this convention. I think that the oath offered by the gentleman from Otoe (Mr. Mason) is a good one. It is an oath that any one can take. I think that the original was bad in form.

Mr. GRIGGS. I call for a division of the question.

The CHAIRMAN. The question is upon the amendment.

The amendment was agreed to.

Mr. LAKE. Mr. Chairman. I move to amend by inserting after the word "officers" in the first line, the words "provided for in this constitution." My object Mr. Chairman, is that this very long and peculiar oath shall not be required to be taken by inferior officers but the legislature may in all cases of inferior officers prescribe what oath shall be taken. It would obviate any question to provide that all officers created by the constitution shall take the oath prescribed in the constitution. It seems to me that it so provides, but it would seem that the legislature must first pass an act relative to it. And my amendment would go further and strike out the words in the first and second lines, "and such inferior officers as may be by law exempted."

Mr. WOOLWORTH. Mr. Chairman I don't like the amendment of my colleague from Douglas (Mr. Lake.) In the first place no civil officer of the state would be obliged to take this oath. Now, as was said when we were considering another part of this article there may be officers of the state created by the legislature, then these officers would not be required to take this oath, while it may be just as important as that the officers named in this article should take it. So I think it is better to leave it as it is. Again, I would have to apply to the officers of the county just as well as to the officers of the state, and as the section stands it will not be very hard for the legislature to pass a law covering all they may wish to exempt, but if I was in the legislature and a bill was brought up to exempt county officers, I would not vote for it at all. It is for these officers as well as officers of the state, that their oath should be prescribed. I don't know but what they are more likely to procure their election by corrupt measures than officers of the state. I must say that I like the section as it stands.

Mr. LAKE. Mr. Chairman. I am in favor of the amendment for several reasons other than those which I have mentioned. In the first place I don't believe that county officers should be compelled to hunt up a judge of the supreme or district court when he has to take an oath of office, and have to file that oath in the office of the secretary of state; it is requiring too much of these officers; and that is just what is required by this section as it now stands with the amendments that have been made to it.

My colleague (Mr. Woolworth) says the legislature may create other state officers not named in this article. Well, when they are created it will be time enough to provide what oath they shall take. Why, unless the legislature should exempt the constable in a remote precinct he would be compelled to hunt up a judge of one of these courts before he could take this oath and then he would have to have that oath filed with the secretary of state here at the capitol.

I would leave it to the legislature in the first instance, to provide what shall be done in respect to them, what oath shall be employed, which shall secure the people of the state, counties and precincts faithful officers. I do not think in an article of this kind which relates to the executive of the state, that we ought to travel outside of that so far as to enter into the minutes of the others which shall be administered to road supervisors, constables, and justices of the peace of the various precincts in our state, that should be left to the legislature. I must insist upon my amendment.

Mr. PHILPOTT. Mr. Chairman. I offer the following substitute to the amendment proposed by the gentleman from Douglas (Mr. Lake). "This oath shall be administered by a judge of the supreme or District court to each of the state officers, and the secretary of state shall file and record the oath so taken and subscribed by such officers, provided that all other officers take the oath of office prescribed before some one authorized to administer oaths, in the county where he resides."

Mr. BOYD. Mr. Chairman. I move the committee rise, report progress and ask leave to sit again.

Mr. ROBINSON. Will the gentleman withdraw his motion a moment.

Mr. BOYD. I will withdraw it.

Mr. ROBINSON. Mr. Chairman. I think when the legislature passes a law creating an office such as constable they may provide he shall subscribe the oath provided for here, I think a matter of that kind should be left to future legislatures. I move to strike out the following:

"This oath shall be administered by a judge of the supreme or district court, and the secretary of state shall file and record the oath subscribed to by each officer."

Mr. MASON. Mr. Chairman. I second the motion to strike out. This would leave the whole matter for the legislature to say before whom the oath shall be taken, with whom the bonds shall be filed, and require every city officer to take this oath "that he will support the constitution of the United States and the constitution of the state of Nebraska, and that he has not contributed anything or done anything to influence the electors." I think that obviates all the difficulty suggested by the gentleman from Douglas (Mr. Lake) and leaves the whole section harmonious.

Mr. PHILPOTT. Mr. Chairman. I withdraw my amendment.

The motion of Mr. Robinson was agreed to.

Mr. WEAVER. I move the adoption of the section as amended.

The motion was agreed to.

The chairman read section twenty-six as follows:

26. The officers mentioned in this article shall give bonds in double the amount of money which may come into their hands, with such provisions as to sureties, and the approval thereof, and for the increase of the penalty of such bonds as may be prescribed by law.

Mr. PHILPOTT. Mr. Chairman. I move the adoption of the section.

The motion was agreed to.

Mr. BOYD. Mr. Chairman. I renew my motion that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. MYERS. Mr. President. The committee of the whole have had under consideration the article entitled "Executive," and have instructed their chairman to report the same with sundry amendments. I make a motion that the report be accepted and the committee discharged from further consideration of the subject.

The motion was agreed to.

Adjournment.

Mr. WILSON. I move the convention adjourn until nine tomorrow morning.

The motion was agreed to, so the convention (at six o'clock and ten minutes) adjourned.

TWENTY-THIRD DAY.

(The manuscript package which contains the debates of the 23rd day's proceedings of the convention of 1871 cannot be found. Just when and how it disappeared from the filing cases which contained the debates is a mystery. In default of the complete reports of the debates for that day the editor inserts the newspaper report of two of the leading newspapers of that time,—The Omaha Tribune and Republican and the Omaha Herald. The files of the Lincoln State Journal and Omaha Bee for this period are missing.)

Omaha Tribune and Republican Report.

Wednesday, July 19, 1871.

Convention met at 9 o'clock a. m. Prayer by Chaplain.

Minutes of the proceedings read and approved.

On motion the convention went into Committee of the Whole on report of Committee on Bill of Rights. Mr. Griggs in the chair.

The substitute of Mr. Manderson to section 13 was considered, which reads as follows:

"Private property shall be held inviolate, but subservient to the public welfare; when taken or damaged in time of war or other public exigency, imperatively requiring its immediate seizure, or for the purpose of making or repairing roads, which shall be open to the public without charge, a compensation shall be made to the owners in money, and in all other cases compensation shall be first made in money, or first secured by a deposit of money. Such compensation for property taken shall in every case be assessed by a jury in such manner as shall be prescribed by law. The fee of land taken for railroad tracks without consent of the owners thereof, shall remain in such owners subject to the use for which it was taken."

Mr. Thomas moved that the word "general" be inserted before the word "benefits", which was lost by a vote of 15 to 28.

Mr. WAKELEY moved to amend the substitute, by inserting the word "other" before the word "property," which was lost.

The substitute was adopted.

On motion the committee rose, reported the article "Bill of Rights," to the convention, with amendments and recommended its adoption as amended.

The report was received and committee discharged from further consideration of the subject matter—which was adopted.

On motion of Mr. Ballard the convention went into Committee of the Whole on future amendments.

Pending discussion upon this subject, the committee rose, reported progress and asked leave to sit again at 2 o'clock p. m.

After Recess.

Convention went into Committee of the Whole on future amendments, Mr. Reynolds in the chair.

The motion pending was upon the substitute of Mr. Lake, of section 2 of the article of the Illinois constitution upon the subject.

A point of order having been made a vote of order was taken upon the motion to strike out the latter clause of the section which was adopted.

Mr. Lake withdrew his substitute, and offered the following:

Propositions for the amendment of this constitution may be made by either house of the legislature, if two-thirds of all the members elected to each house shall concur therein; such proposed amendments, together with the yeas and nays, shall be entered on the journal, and the Secretary of State shall cause same to be published in at least one newspaper in each county of the state where a newspaper is published; for three months preceding the next election for representatives at which time the same shall be submitted to the electors for their approval or rejection, and if a majority of the electors voting on said amendment at such election shall adopt the amendments, the same shall become a part of the constitution. Where more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately, and not more than three propositions to amend shall be submitted at the same election.

The substitute was lost.

Mr. Robinson moved to amend the section by inserting the word "for" before the words "three months," and the words "immediately preceding" before the word "months" and the words "the next general election."

Mr. Lake moved to insert the word "weekly" before the word "for" which amendment was accepted by Mr. Robinson.

The section as amended was adopted.

The second section was taken up which read as follows:

Sec. 2. Upon the expiration of

twenty-five years from the adoption of this constitution, or any years thereafter, the legislature may provide by law for the submission of this question: "Shall there be a convention to revise or amend the constitution?' and should a majority of the legally qualified electors voting thereon decide in favor of calling a convention for such purpose, then the legislature at its next meeting shall provide by law for the election, qualification and pay of delegates to such convention."

Mr. Ballard moved to strike out the section which was lost.

Mr. Mason moved that all before the words "the legislature may provide," etc., be stricken out, and insert the words "at a general election," after the word "question."

Mr. Towle offered a substitute for the section which was lost.

Mr. Boyd moved to strike out the whole section and adopt a substitute, as follows:

"Whenever two-thirds of the members elected to each house of the legislature shall by a vote entered on the journal thereof, concur that a convention is necessary to revise, alter or amend the constitution, the question shall be submitted to the electors at the next general election. If a mojority voting thereon at the election vote for a convention, the legislature shall at the next session provide for a convention, and shall, in the Act calling the convention, designate the day, hour, and place of its meetings, and fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the performance of its duties. The law submitting the question shall be published for the time and in the manner provided in the preceding section, as to the proposed amendment."

The substitute was adopted.

The committee rose, reported the article back, and recommended its adoption.

The convention went into Committee of the Whole on "Rights of Suffrage."

Sec. 1 which read as follows:

"Every male person of the age of twenty-one or upwards, belonging to either of the following classes who shall have resided in the State, county, precinct, and ward for the time provided by law shall be an elector:

First. Citizens of the United States.

Second. Persons of foreign birth who shall have declared their intention of becoming citizens conformably to the laws of the United States on the subject of naturalization.

Mr. Philpott moved to strike out the word "male" which was lost.

The section was adopted.

Section two was taken up which reads as follows:

"The legislature may extend by law, the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election and approved by a majority of all votes cast on that question at such election."

Mr. Robinson moved to strike out the section.

Pending the question, on motion the committee rose, reported progress and ask leave to sit again.

Adjourned till 9 o'clock tomorrow.

Omaha Herald Report.

Wednesday, July 19, 1871.

Convention met at 9 o'clock a. m.

Prayer by the Chaplain.

Minutes of the proceedings read

and approved.

On motion the convention went into Committee of the Whole on report of committee on Bill of Rights, Mr. Griggs in the chair.

The substitute of Mr. Manderson to section 13 was considered, which reads as follows:

"Private property shall ever be inviolate, but subservient to the public welfare, when taken or damaged in time of war or other public exigency imperatively requiring its immediate seizure, or for the purpose of making or repairing roads, which shall be open to the public without charge, a compensation shall be made to the owners in money, and in all other cases a compensation shall be first made in money or first secured by a deposit of money; such compensation for property taken shall in every case be assessed by a jury in such manner as shall be prescribed by law. The fee of land taken for railroad tracks without the consent of the owners thereof, shall remain in such owners subject to the use for which it was taken."

Mr. Thomas moved the word "general" be inserted before the word "benefits," which was lost by a vote of 15 to 28.

Mr. Wakeley moved to amend the substitute, by inserting the word "other" before the word "property," which was lost.

The substitute was adopted.

On motion, the committee rose, reported the article "Bill of Rights" to the convention, for amendments, and recommended its adoption as amended. Report received and committee discharged from further consideration of the subject matter, which was adopted.

On motion of Mr. Ballard the convention went into the committee of the whole on future amendments.

Sec. 1st, which reads as follows:

"Any amendment or amendments to this constitution may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of the members elected to each house, such proposed amendment or amendments shall be entered upon their journals, with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published three months before the next election in at least one newspaper in every county in which a newspaper shall be published. and if in the legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the Secretary of State shall cause the same to be published in the manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner and in such time (at least three months after being agreed to by both houses) as the legislature shall prescribe: and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this state, voting thereon, such amendment or amendments shall become a part of the constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years; provided, that if more than one amendment be submitted they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

Mr. Moore moved to strike out "five years" and insert "three years."

Mr. Kirkpatrick offered an amendment to the amendment, striking out all after the words "shall become a part of the constitution," which was accepted by Mr. Moore.

Mr. Sprague offered a substitute to the amendment, striking out the words "but no amendment or amendments shall be submitted to the people oftener than once in five years."

Mr. Estabrook offered a substitute for the section, "The legislature (two-thirds of both houses concurring) may at any time propose amendments to this constitution, which shall be valid to all intents and purposes as part of this constitution, when ratified by a majority of two-thirds of all the votes cast on that subject at a general election."

Mr. Towle moved to amend the substitute by striking out the words "two-thirds" where they last occur.

Mr. Lake offered as a substitute for the section, the article of the Illinois constitution upon the subject of amendments, which was accepted by Mr. Estabrook, who withdrew his substitute.

Pending discussion on this question the committee rose, reported progress and asked leave to sit again.

Adjourned till 2 o'clock p. m.

After Recess.

Convention went into Committee of the Whole on Future Amendments, Mr. Reynolds in the chair.

The motion pending was on the substitute of Mr. Lake, on section 2 of the article of the Illinois constitution upon the subject.

A point of order having been made, a vote was taken upon the motion to strike out the latter clause of the section, which was adopted.

Mr. Lake withdrew his motion and offered the following:

"Propositions for the amendment of this constitution may be made by either house of the legislature if two-thirds of all the members elected to each house shall concur therein; such proposed amendments together with the yeas and nays, shall be entered on the journal and the Secretary of State shall cause the same to be published in at least one newspaper in each county of the state in which a newspaper is published for three months preceding the next election for representatives, at which time the same shall be submitted to the electors for their approval or rejection, and if a majority of the electors voting on said amendments at such election shall adopt the amendments, the same shall become a part of the constitution. Where more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately, and not more than three propositions to amend shall be submitted at the same election.

The substitute was lost.

Mr. Robinson moved to amend the section by inserting the word "for" before the words "three months," and the words "immediately preceding" between the word "months" and the words "the next general election."

Mr. Lake moved to insert the word "weekly" before the word "for," which amendment was accepted by Mr. Robinson.

The section as amended was adopted.

The second section was taken up which read as follows:

Sec. 2. Upon the expiration of twenty-five years from the adoption of this constitution, or any years thereafter, the legislature may provide by law for the submission of this question: 'Shall there be a convention to revise or amend the constitution?' and should a majority of the legally qualified electors voting thereon decide in favor of calling a convention for such purpose, then the legislature at its next meeting shall provide by law for the election, qualification and pay of delegates to such convention.

Mr. Ballard moved to strike out the section which was lost.

Mr. Mason moved that all before the words "the legislature may provide," etc., be stricken out, and insert the words "at a general election," after the word "question."

Mr. Towle offered a substitute for the section which was lost.

Mr. Boyd moved to strike out the whole section and adopt a substitute, as follows:

"Whenever two-thirds of the members elected to each house of the legislature shall by a vote entered on the journal thereof, concur that a convention is necessary to revise, alter or amend the constitution, the question shall be submitted to the electors at the next general election. If a majority voting thereon at the election vote for a convention and shall in the Act calling for a convention designate the day, hour, and place of its meeting, and fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the performance of its duties. The law submitting the question shall be published for the time and in the manner provided in the preceding section, as to the proposed amendment."

The substitute was adopted.

The committee rose, reported the article back, and recommended its adoption.

The convention went into Committee of the Whole on "Rights of Suffrage."

Sec. 1 which read as follows:

"Every male person of the age of twenty-one or upwards, belonging to either of the following classes who shall have resided in the State, county, precinct, and ward for the time provided by law shall be an elector:

First. Citizens of the United States.

Second. Persons of foreign birth who shall have declared their intention of becoming citizens conformably to the laws of the United States on the subject of naturalization.

Mr. Philpott moved to strike out the word "male" which was lost.

The section was adopted.

Section two was taken up which reads as follows:

"The legislature may extend by law, the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election and approved by a majority of all votes cast on that question at such election."

Mr. Robinson moved to strike out the section.

Pending the question, on motion the committee rose, reported progress and ask leave to sit again.

Adjourned till 9 o'clock tomorrow.

TWENTY-FOURTH DAY.

Thursday, July 20, 1871.

The convention met at nine o'clock and was called to order by the president.

Prayer.

Prayer was offered by the chaplain as follows:

Almighty God, our Heavenly Father, Maker of Heaven and of Earth, remember us this day. Keep us from vanity. Show Thy preserving care unto this generation. Hide not Thy face from us, but reveal Thyself unto us in great mercy and in great love, we pray now and forever, through Jesus Christ our Lord. Amen.

Reading of Journal.

The Journal of the preceding day was read and approved.

Leave of Absence.

Mr. WILSON. Mr. President. Mr. Parker has been called home and desires me to ask leave of absence for him for five days.

Leave granted. NEM. COM.

Special Orders.

Mr. MYERS. Mr. President. I present an order.

The secretary read the order as follows:

Ordered that the Bill of Rights and the bill entitled "Future Amendments" shall be the special orders for 2 o'clock every day until they are disposed of

Mr. MYERS. Mr. President. I move its adoption.

Motion agreed to.

Reports of Standing Committees.

Mr. THOMAS. Mr. President. Your committee on municipal corporations desires to submit a report

Mr. MANDERSON. Mr. President. I move that the reading of the report be dispensed with; that it be read twice by its title, ordered printed, and referred to the committee of the whole House.

Motion agreed to.

The PRESIDENT. One hundred and fifty copies of the report will be printed and it will be referred to the committee of the whole House.

Mr. NELIGH. Mr. President Your committee number eleven is ready to report.

Mr. BOYD. Mr. President. I move that the reading of the report be dispensed with, the report read twice by its title, 150 copies be printed, and the report referred to the committee of the whole.

Motion was agreed to, and the bill read twice by title and ordered printed.

Resolutions.

Mr. VIFQUAIN. Mr. President. I desire to offer a resolution.

The secretary read as follows:

Resolved, That this convention takes pleasure in granting the privileges of the floor to the Irish Patriots, Thomas Francis Burke and Clark Luby.

Mr. VIFQUAIN. Mr. President. I move the adoption of the resolution.

The motion was agreed to.

Mr. CAMPBELL. Mr. President. I desire to offer a resolution.

The secretary read as follows:

Whereas, The last legislature appointed a committee to investigate the frauds on railroads to which was paid $710.60, and another committee called "The Joint Investigating Committee," to which was paid $796.00;

Therefore Resolved: That a provision be incorporated in the constitution now being prepared, providing that all accounts of whatever nature, presented to the legislature shall be itemized before said accounts shall be allowed.

Mr. CAMPBELL. Mr. President. These railroad and investigating committees were appointed last winter, with the Hon. James Doom as chairman of the railroad—

Mr. CASSELL. Mr. President. I

rise to a point of order. Is there a question before the House?

The PRESIDENT. The gentleman from Otoe (Mr. Campbell) has the floor, and is speaking by leave. Does the gentleman from Lancaster (Mr. Cassell) object.

(Leave! Leave!)

Mr. CAMPBELL. The gentleman from Lancaster (Mr. Cassell) has always been allowed to speak whenever he wishes. He is one of those long haired men whom we have to treat tenderly—

Mr. CASSELL. Mr. Chairman. I rise to explain. I have had my hair cut lately, and I am not now " a long haired man." (Laughter)

Mr. CAMPBELL. Mr. Chairman, As I said before, these gentlemen of the railroad committee, with James Doom as chairman, went down the Omaha & Southwestern R. R., the Omaha & Northwestern R. R., and the Midland & Pacific road. They were gone a few days and came back here and presented a bill for $710. Now what good has this done the state. I think we should protect ourselves against these swindles in the future.

Mr. McCANN. Mr. President. I think the wording of the proposition should be corrected. It reads "frauds on Railroads." I think it should read "frauds of railroads."

Mr. MYERS. Mr. President. The is an itemized account of the railroad bill for $710.60, in the secretary's office which the gentleman can see.

Mr. MASON. Mr. President. I hope all before the word "resolved" will be stricken out. I move to strike out all of the resolutions preceding the word "resolved." I desire it to read: "Resolved, that the committee take into consideration the propriety of requiring all bills against the state to be itemized." I deem that resolution a very wise one, but I regret that my colleague should think it necessary to reflect against any committee or legislative action.

The PRESIDENT. The motion is to strike out all preceding the word "resolved" in the resolution.

The motion was agreed to.

Mr. THOMAS. Mr. President. I suppose the mover of this resolution supposed these two bills were not itemized. I know that the Investigating committee bill is itemized.

Mr. MYERS. I know of my own knowledge, that the R. R. bill is itemized. The gentleman can see it in the secretary's office.

The motion to strike out was agreed to.

MR. MASON. I move to refer the resolution to the Committee on Finance.

The motion was agreed to.

MR. WOOLWORTH. Mr. President. I move that the report of the Committee on the rights of Suffrage be made the special order for Monday evening at seven o'clock, and that we devote to the discussion on female suffrage the evenings of next week.

MR. STEVENSON. Mr. President, I move to amend so as to fix the first discussion on Tuesday evening,

Mr. MAXWELL. Mr. President. It is very desirable to get through as soon as we can and I move that the second section be recommitted.

Mr. ESTABROOK. Mr. President. I am in hopes the whole subject may be recommitted, so that a proposition on female suffrage may be submitted to bring the question before the people.

The PRESIDENT. The question is on recommitting the second section.

Mr. ROBINSON. I would like to amend by instructing the committee to report a separate section on female suffrage.

Mr. WOOLWORTH. Mr. President. I hope the motion to strike out will be withdrawn in order to allow this matter to be recommitted.

Mr. ROBINSON. I will withdraw it.

Mr. WOOLWORTH. I will withdraw my motion for special order.

Mr. MYERS. Mr. President. I move we now go into the committee of the whole on the Legislative Article.

Mr. WAKELEY. The consideration of the article on Suffrage was not completed as the second section only is recommitted. I think we should finish the remaining sections of the article.

Mr. MOORE. If it be in order I would amend the motion of Mr. Myers by substituting the remainder of the Article on Suffrage.

Mr. MYERS. I accept the substitute.

Mr. ESTABROOK. I move that the whole article be recommitted.

The Convention divided and the motion was agreed to.

Mr. MYERS. Mr. President. I renew my motion that the Convention do now resolve itself into the Committee of the Whole on the Legislative Article.

Mr. ROBINSON. Mr. President. For my part, I am not prepared on that article and I will move to amend to substitute report of Judiciary Committee.

The Convention divided and the amendment was not agreed to.

Mr. ROBINSON. Mr. President. I move to amend by substituting report of Committee on State, County, and Municipal Indebtedness.

Mr. ESTABROOK. Mr. President. I move to amend by inserting report of Committee No. 7 (State Institutions and Public Buildings).

Mr. HASCALL. Mr. President. I hope the Article on Legislative may be taken up and considered so that the Committee on Apportionment may commence its work.

Mr. McCANN. Mr. President. There is another reason why the Article on Legislative should be taken up and considered and that is that the Committee on Revenue and Finance would have inserted in their report a section relative to the appropriation of public moneys had they not supposed that matter would have been considered by the Legislative Committee. It is necessary therefore to consider this article in order that we may know what will be in it and that the two may not conflict.

Mr. WOOLWORTH. Mr. President: I wish to say as to the Executive Article that it should not be gone through with in the convention until this report of the Legislative Committee and of other Committees be acted upon in the Committee of the Whole. It will be a very serious question before we get through whether we will create new officers or not. I hope therefore that we will take up these articles one by one and dispose of them in the Committee of the Whole.

Mr. ROBINSON. Mr. President. I will withdraw my motion in favor of the motion of the gentleman from Douglas (Mr. Estabrook) to go into the Committee of the Whole on the report of the Committee on State Institutions and Public Buildings.

Mr. CASSELL. Mr. President. The Committee on State Institutions reported it. I would like to have it come up at the present time.

The CHAIRMAN. The question is on going into committee of the whole to consider the report of the Committee on State Institutions and Public Buildings.

The Convention divided and the motion was agreed to.

Committee of the Whole.

The convention resolved itself into committee of the whole, Mr. Myers in the chair.

The secretary read the article as follows:

¶1. That a board of commissioners, consisting of———, to be called commissioners of state institutions and public buildings, shall be elected at the first general election provided for in this constitution, whose duty it shall be to have the general supervision and control of all state institutions and public buildings, and the care and sale of all lands appropriated for and belonging thereto.

¶2. Said board of commissioners shall let all contracts for the erection of new state buildings, additions, repairs and supplies for the same to the lowest bidder, after duly advertising the same, and shall perform such other duties as the legislature shall hereafter provide.

state institutions and public build-

3¶. The board of commissioners of ings shall perform the duties of the normal school board of education, and shall be regents of the state university and agricultural college. The governor as member ex-officio and chairman shall complete said board of regents.

¶4. The term of office of said commissioners shall be for three years, excepting the first, which shall be for one, two or three years, and there shall be elected one in each judicial district of the state.

The electors in each district shall vote for one commissioner to be a member of said board, and for one only. Before they enter upon the discharge of the duties of their office, they shall each take the oath of office prescribed for the state officers, and shall each execute a good and sufficient bond to the state for the faithful performance of the duties of the office, in double the sum of monies that is liable to come into their hands during their term of office.

¶5. Said board of commissioners shall receive such compensation as the legislature shall hereafter provide.

Article.

¶1. The state institutions and public buildings shall be located and built at the capital of the state.

¶2. The capital or seat of government of this state shall remain at the city of Lincoln. All of which is respectfully submitted.

The secretary read the additional

report as follows:

Your committee on State Institutions and Public Buildings, to whom was referred the resolution "To inquire into the expediency and expense of purchasing an executive mansion," beg leave to submit the following report:

We have conferred with Gov. Butler, and ascertained the cost of his property, which he will sell at cost.

Cost of mansion..........	$22,000
" " Furniture	10,000
" " Barn and Outbuildings	3,000
" " Fence and Painting	2,000
" " Trees, Grapes, Shrubbery, etc	1,000
" " Eight Acres grounds .	2,000
Total, 8 acres and improvements	$40,000
Total, 40 acres and improvements	50,000
Total, 120 acres and improvements	60,000

Will take what he owes the state for part pay, and state warrants for the balance.

J. N. CASSELL, Chairman.

The CHAIRMAN. The secretary will read the first section of the article.

The secretary read the first section as follows:

1. That a board of commissioners, consisting of————, to be called commissioners of state institutions and public buildings, shall be elected at the first general election provided for in this constitution whose duty it shall be to have the general supervision and control of all state institutions and public buildings, and the care and sale of all lands appropriated for and belonging thereto.

Mr. BOYD. Mr. Chairman. I move to strike out all after the word building in fourth line.

Mr. CASSELL. Mr. Chairman, I am not very particular about this amendment. One of the Commissioners referred to might be selected as a Land Commissioner and save the salary of a separate one to the state. At the present time we have three commissioners of the Penitentiary who are receiving pay; we have also three appointed to superintend the building of the asylum, commissioners for the Deaf and Dumb Institute to be erected at Omaha, also a Board of Regents for the Normal School. I presume they receive more or less pay. We have also nine regents of the University receiving pay. There are over twenty individuals receiving pay from the state, performing duties which the committee thought three or four competent gentlemen might perform just as well who ought to be held responsible by the state. The amount of pay received by the penitentiary commissioners already amounts to something like $2,000 each. I think it will be economy on the part of the state to have its business performed in a more suitable manner.

Mr. CAMPBELL. It is not necessary for all this Board of commissioners to be under pay from the state every day. They can receive pay only when it is necessary to meet. I think it would be necessary for one to receive a yearly salary.

Mr. KIRKPATRICK. In answer I would state that I believe the penitentiary is under contract and will be completed before this constitution shall take effect; and also that the three commissioners have been appointed to secure another lunatic asylum and that will be very probably completed. Now, with regard to the Board of Regents of the University, I think they will, by no means, be a building committee. They are appointed to take charge of the educational interests of the state.

The CHAIRMAN. The argument is going farther than the motion, and gentlemen will confine themselves to the question which is submitted.

Mr. STRICKLAND. Gentlemen, as the Chairman has an interest in this discussion, and desires to be heard on the subject, I will, with the permission of the convention, ask General Manderson to take the chair.

Mr. Manderson then took the chair.

The CHAIRMAN. Gentlemen. The matter before the house is the motion of the gentleman from Douglas, to strike out, in the fourth line, all after the word "buildings."

Mr. SPRAGUE. Mr. Chairman. I am in favor of the amendment. The management, care and sales of the lands, is all that any one gentleman can attend to. It is sufficient to occupy his whole time and attention. And the interest is of that importance, it strikes me, that demands the attention of some gentleman well qualified to fill that position; and, I am opposed, as one individual member of this convention, to throw upon the individual who shall have control and care of these lands, any other duties whatever. It is unwise to encumber him with the performance of any other duties, which would be the case as this section now stands.

Mr. WOOLWORTH. Mr. Chairman. This is a very serious question. It ought not to be acted upon by the committee hastily at all. There is more covered by the amendment of my colleague from Douglas than the simple question whether we will strike out these words, and will create, by another section of another article, the office of land commissioner. There is no broader and graver question lying right at the foundation of this report. It is one which ought to be treated as a general question, and we ought not to confine ourselves in the consideration of it, to mere details. That question is—whether we shall go on and multiply these state officers, to a very great extent. Now, it is proposed to have a board of Commissioners, of State Institutions and Public Buildings. I suppose to consist of at least three, possibly four or five. The fourth section requires one of these commissioners to be elected from each judicial district —possibly they may be four—possibly they may be five. And in addition to them there will be the Governor. Then it is proposed to have, at any rate, a land commissioner, and I do not know but it will be proposed to have a recorder of the land office. Then there are inspectors of State Prison, and there are other boards which, it is curiously thought by some gentlemen of this convention, ought to be also made members of this board. The gentleman from Lancaster (Mr. Cassell) went on to state to you that there are twenty men under pay by this state for taking charge of these two institutions. Now, that is a great mistake. That is a state of affairs that in this constitution, we ought certainly to provide against by a direct provision of the constitution in that behalf. Now, I do not know that I should strenuously oppose the views suggested by the gentleman from Lancaster, the chairman of this committee,that there should be one board, and one board only, which should not be composed of officers of the executive department, as mentioned in the executive article; not to one board composed of a limited number of persons, that shall have charge of all these interests, but I am decidedly, I am firmly opposed to the creation of this board, and then of any other board whatever. I do not know, I say, that I should be so strenuously opposed to the proposition of the gentleman from Lancaster, as he stated it, to create one board that shall have charge of all of the interests of the state outside of what would only be placed upon the officers of the executive department; but I shall certainly be opposed to the creation of any other board whatever. And, therefore, I am opposed, if the section is to be adopted at all, to the amendment of my colleague from Douglas.

Mr. GRAY. Let me ask whether you would have this board also take the place of the board of education?

Mr. WOOLWORTH. So far as the educational interests of the state are concerned I am not prepared to answer the question. I am not prepared to say until I look more carefully into the article on education, whether it would not be necessary to have a Board of Education, to have charge of the educational interests of the state separate from the property of the state which is to be used for the support of the schools. I have had but little thought to be able to state what my decision would ultimately be. But I am in favor of limiting this large number of state officers, that we are likely, unless we are careful, to create. Now, see what you are doing. The committee of the whole upon the executive article, as it now stands, propose to create the office of Governor. of Secretary of state, of State Auditor of Public Accounts, of Treasurer, of Superintendent of Public Instruction, and an Attorney General. There are six officers. See what you pay them. You pay your Governor $4,000. You pay each of three of these officers $2,000 more which makes $6,000. There is $10,000. You pay your Treasurer $2,500, and your Attorney General $2,500 more, which makes $5,000. There is $15,000 for salaries of officers of the executive department. Now, gentlemen, if you create this board, you cannot give any gentleman who is fit to be on this board any sum less than $2,000 per year. If you leave it to the legislature to fix the salary of these commissioners, you will find they will give them about $2,000 each and mileage; and if you will count up what the mileage will be going over the state to Peru to look after the Normal School and over here to Lincoln, making one trip to consider first the Capitol, then going back home and coming back secondly to inspect the states prison, and then the University, and so on round everywhere over the state; and going to Omaha to look after Deaf and Dumb institution, you will find your mileage will a good deal exceed the salary you will give. If it is necessary, in order to get good men, and in order to have these interests fairly taken care of, that the offices should be created, and this expense incurred, why, all right. We will have to do it. But if we can avoid it, it is very important we should do it. It is very important in a great many ways that we should do so. I tell the gentlemen from Lancaster, who are especially interested in the progress and growth of this town; I tell the gentlemen in Lincoln, in all candor and fairness, that it becomes them to be exceedingly careful about these large expenses. The day may come when the people of this state will become a little restive under these large expenses, and these public buildings, in the erection of them, will either be increased or the plans very largely curtailed. I tell the gentlemen of this convention, from all parts of the state, that this matter is one that deserves the most important consideration at their hands. I tell the gentlemen of this convention that when they go back to their constituents, and show them the constitution on this plan it will be rejected.

Now, I am opposed to the amendment. I am in favor, if a board is to be created, to have this board take charge of all the property of the state. I differ from the gentleman from Lancaster, that it is not a very material matter. I think is is very material. I think we ought to make these commissioners, three,four, five or six in number, as we may decide —I think they should take charge of all the property of the state, if we create this board at all—pay these state officers a good salary and then make them earn their money. But, leaving that matter out of the question, I am decidedly opposed to multiplying these offices. We will run along here until we get, not only these six offices, provided in the executive article, but the twenty spoken of by the gentleman from Lancaster. It will not do.

Mr. SPEICE. Mr. Chairman. I move to amend by striking out all preceding the word "whose" in the 3rd line, and substituting this:

The Secretary read the substitute as follows:

That the Governor, Secretary of State, and Auditor of State and the Superintendent of Public Instruction shall constitute a board, to be called "Commissioners of State Institutions and Public Buildings."

Mr. ESTABROOK. I think the Attorney General should be included, if the state officers are to go in.

Mr. SPEICE. I am willing, Mr. chairman, to have the name of the Attorney General inserted. The section will then read:

That the Governor, Secretary of State ,Auditor of State, the Superintendent of Public Instruction and Attorney General, shall constitute a board to be called "Commissioners of State Institutions and Public Buildings," whose duty it shall be to have the general supervision and control of all state institutions and public buildings, and the care and sale of all lands appropriated for and belonging there to.

If the name of the Superintendent should not be there I am willing to have it stricken out.

Mr. NEWSOM. Mr. Chairman. I think there is eminent propriety in having the name of the Superintendent of Public Instruction in that provision. It is fit and proper he should be there on account of his knowledge of the business.

Mr. STRICKLAND. Mr. Chairman. It seems to me that this board, sitting as a board having supervision of the schools can deputize one individual to go and look after one institution while another would be sent to look after another; the whole board looking after the institutions located here. I understand that in the past year, the Regents of the University here, have rolled up very large sums as claims for services rendered. They will come from our town, for instance, sit here one day, and go back with seventy or eighty dollars in their pockets. I think that the proposed amendment will substantially guard against this. One member of the board can attend to the business to a great extent, when it comes to visiting other institutions than those located, and, except in special cases, avoid this great expense. There was no more necessity for the ten Regents to our University when we don't require more than three or four, than there is for a wagon to have five or six wheels.

Mr. SPRAGUE. Mr. Chairman. I am as much in favor of economy proposed, as any gentleman can be, but I am opposed to this amendment, and for this reason; the committee on schools have already adopted a section which provides for a board which shall have control of the Normal, University and other schools named in this section. Now if we adopt this, which provides for another board which shall have supervision of the same schools, it will necessitate our doing away with one or the other of these boards. At the time this matter was discussed, in connection with the report of that committee, I presented a proposition which was voted down. It was about the same as this, but it was voted down; and all the committee adopted a resolution that the state officers and such others as the legislature should provide, should constitute that board. So far as the sale and care of the state lands are concerned, this section was fully discussed and it was clearly the opinion of the members of the convention at that time, that there should be another department for the sale and care of these lands; and the report was referred back to the committee with instructions that they would create this office. Now if we are to review all that, when will we get through? I don't think we had better leave the report as adopted by the committee, and let the legislative article remain as it is.

Mr. STEVENSON. Mr. Chairman. I am as much in favor of economy as any other member of this convention, but I don't see how we are going to save expenses by imposing this on the executive officers of the state. I think that they have their hands full without imposing on them these additional duties. As I understand it is not the intention of the gentleman offering this amendment to impose these duties without additional pay, but the idea is to give them the same pay as other men. Now then as far as these men running down here from Omaha and collecting railroad fare, I believe they will not be any more likely to do so than the Governor and other officers, in performing these duties. I think before we adopt this amendment we should take all these things into consideration. I think these officers will have enough to do to attend to the duties of their offices, and I think this board should be men who could give their whole attention to the subject of education.

Mr. GRIGGS. Mr. Chairman. I am in favor of the amendment for several reasons, one on account of expense. I believe it will be much less if we leave all the matters of the State Institutions in the hands of the officers named in the executive article. We have already provided that they shall live at the state capital, where the most of these buildings are and where most of this business must be done and these being included in the duties of their offices, they would be already paid. I must differ from the gentleman for Cuming (Mr. Stevenson) when he says the salaries of other men on this board will not be much greater than to pay these officers. These officers must reside here, whereas if we elect a board of commissioners they may reside in any part of the state and will have to be paid for coming here to attend to the business.

Mr. MOORE. Mr. Chairman. I offer a substitute for the whole amendment.

"That a Board of Commissioners be chosen at the first general election after the adoption of this constitution, one from each judicial district, who shall have the general supervision and control of state institutions and public buildings."

Mr. GRIGGS. Mr. Chairman. I rise to a point of order, I believe that the substitute is an amendment and out of order.

The CHAIRMAN. The chair decides that the substitute is in order.

Mr. WAKELEY. Mr. Chairman. This perhaps is as proper an occasion as any for members to express their views on the subject under consideration. The substitute proposes to elect a board of commissioners. My views are that we ought to have the state officers to comprise that board, the duties which it is proposed to devolve upon this board, can in the main be discharged by the state officers with very little additional expense to the people. In the meantime it seems to me that there is a property by creating a head to the Land Department, and I calculate to favor a plan in substance like this; that there shall be elected one land commissioner, and that the other members of the board shall consist of the whole of the other state officers.

The reason for the election of a land commissioner is that there is a large body of land, and there should be one officer whose special duty should be to have supervision of the landed interests of the state. The governor, auditor and secretary of state, each has a department, and while they could give some attention to the disposal of the land yet no one of them by reason of the duties of his office is charged with the care of the land of the state. I think by reason of the great value of these lands we can elect one officer who shall have these special duties placed upon him. The gentleman from Nemaha is preparing a section which shall have special reference to this matter. Again, I believe that this board should not have the charge of the educational interests of the state. I believe it is improper to connect the two subjects of the disposal of the lands of the state, and the educational interests of the state. I think they should be under separate control and supervision. The care and supervision of the public buildings is the material property and interest of the state, but the management of the educational interest of the state, all questions connected with the method of instruction in the different schools and educational institutions is of an entirely different nature and I think ought to be under the charge of the Superintendent of Public Instruction and such other officers as the legislature may prescribe. I therefore am opposed to section three of this article. I think we ought to avoid a multiplicity of officers, on the other hand I think our landed interests are of sufficient consequence to have one officer charged with the duties connected with that department.

Mr. McCANN. Mr. Chairman. This whole system is surrounded with difficulties and I do not believe the committee are prepared to either adopt or reject the report of the committee this morning. I wish to avail myself of this opportunity to state to the committee that I am one of the Regents of the University, and have been so since February last. I have attended three meetings of the Board and have received, not a salary, but what the law provides shall be paid to the Regents living at a distance, that is twenty cents per mile going to and returning from such meetings. I have received twenty-two dollars and forty cents for such services which does not include any time. The Regents are not entitled to any greater compensation than this mileage. In this connection, Mr. Chairman, I believe that we should so provide that the expense of managing our educational interests shall be economized, and for the election of a Land Commissioner who shall manage all of the lands belonging to the school fund and the revenue arising therefrom, or provide that the educational interests of this State shall not be committed to a large number of individuals receiving mileage or large salaries for their services. I hope, Mr. Chairman, that this will be recommitted to the Committee, not with instructions as to what they shall do, but an intimation that this committee believes the State officers should constitute a Board of Public Instruction, and that a Land Commissioner shall be provided for who shall manage the lands and the moneys derived from the school and other lands of the State.

Mr. MAJORS. Mr. Chairman. This is a question to which I have given some thought, and whilst my views may not benefit anybody else, yet I will state them. I am opposed to all the amendments and the original article as it stands. In the first place I am opposed to the management of the entire interests mentioned here, by any commission that may be brought about in this way, and in the second place, as to the amendment offered, I am of opinion that every officer of the State should have his duty assigned him, that he cannot in any possible way be mistaken as to what is his duty. You take gentlemen grouped together and put upon them general duties to perform, and as long as their minds run parallel they may work smoothly, but after a while there will be differences of opinion come up, and they get a disposition to oppose each other, thereby injuring the interests of the people committed to them. Human nature is human nature. As has been justly remarked, we are men and not angels. The best of men who may be grouped together would be something out of the natural way of business if they should all be pure minded. Obviate this difficulty, and prevent our people from getting into such trouble as this. Let us fix definitely the duties of the officers of the State, and if we make provision for a Land Commissioner, let us hold him individually responsible to us for his work, and not distribute the responsibility among several State officers, without having any one directly bound to the people. Now, Mr. Chairman, as to the public buildings, instead of having the multiplicity of minds we have now, let us provide in this Constitution for one individual to attend to that work, put him under such bonds as shall make it safe to the building interest of the State, that he shall perform his duty. So far as the educational interests are concerned, I think it would be wise to leave this matter to the Legislature in a great measure, to provide by law. So far as the workings of the Normal School is concerned, I will say that I am very familiar with its workings. I have been fortunate, or unfortunate, in being a member of the Board of Education of the Normal School from its organization to the present time, and if there has been any fault found by any gentleman of the State in regard to its workings, I have not heard it. We are authorized by law —five of us in number—to hold four meetings in a year. We can draw if we choose, three dollars per day. The Board never has spent more than one day at each meeting, which you can multiply by three, and see what the Board can draw in the aggregate according to law. I believe there has been no disposition to ask or receive a cent beyond that, and I will say right here, Mr. Chairman, that there are interests arising in the conducting and management of the Normal School in particular, that demand the attention of the Board of Education. And I have spent days, and I know others have done the same, and we have never thought of bringing a cents' charge against the State for the extra services outside the four days. We have managed the interests of that Normal School in such a manner as that the entire appropriation of the State is given to our work. And last winter, when the members of the Legislature were engaged in investigating the wrongs which had been done the State, they mentioned, as an honorable exception, the State Normal School. And, since this has worked so much good to the educational interests of our State in the hands of the present system of management, why should we take it away and place it in the Executive officers of the state? I ask, gentlemen, to consider this question carefully; to act dispassionately, and cast their vote on the side they believe is right. And I believe that right economy will be observed, and the interests of the State better cared for, by having each particular branch placed in a particular body of men than by placing the whole upon one body.

Mr. CASSELL. Mr. Chairman. I will just state to the gentleman that no reflections were intended to be cast upon the managers of the Normal School, or others who have performed various duties in the State. The gentleman thought it would be better to leave it to the Legislature. Now this is what we want to avoid. And why? Simply because the matter heretofore has been left to the Legislature, and instead of having one board created to attend to these duties we have four or five separate boards of commissioners. I think this body is just as competent to regulate this matter here and now, as the Legislature next winter will be. And it is that we may regulate these matters that we wish to create this single board. The gentleman spoke of one person as a commissioner. I think this in itself is objectionable; and that we ought to have several individuals to attend to the letting of contracts instead of one. It has been said here that if parties are desirous to corrupt one is much easier corrupted than half-a-dozen. And for that reason I argue that several persons, and not one, should have this in their charge, and be responsible to the state for the money placed in their hands. The gentleman from Douglas said he was desirous that their servants should earn their money. That is why we ask so many duties to be performed by this board. We cannot see why five persons cannot perform all the various duties required in this section; and we do not expect there is too much for them to perform. We expect them to have work to do for their salary; and it is in order to save expense that we ask for them to do so much. It is my desire, if this section is carried through, that no other board shall be created. We do not wish another board. We wish this to take the place of all other commissioners. Some may argue that the Superintendent of Public Instruction will come in the way. Mr. Chairman, I wish that officer to be one of this Board of State Commissioners. The same objection is argued in regard to others—the Land Commissioner for instance. If we have such an officer, why not let him be a member of this board? Such is my desire. We have saved the salary of two Commissioners whom we desire to include in this section. So far as the Board of Education is concerned, I consider that the Superintendent of Public Instruction is all the board we require. He will do it properly and economically if we appoint a proper man. It has been argued that these gentlemen will not be prepared to act as Regents of the University. Well, we have a Chancellor and a Board of Professors and they will attend to the duties of that institution, and they will object when the other gentlemen attempt to interfere. The board we propose can attend to all matters outside, and the Regents atend to the finances, etc. The objections argued are here provided against. I am decidedly in favor of a board of this kind. And while there is nothing directly upon this question in the Constitution of the United States, yet it is a good plan and will save money to the State.

Mr. HASCALL. Mr. Chairman. I am of opinion that we have no need of any article which contains such a section as this. in our constitution. On a former occasion, we adopted a section which is adequate for the management of our common schools and also for the University, Agricultural college and Normal school.

Mr. CASSELL. I believe that section has not been adopted by this convention .

Mr. HASCALL. May be, Mr. Chairman, that that was one of the matters which was referred back to the committee on executive; but I am decidedly in favor of conferring all these duties upon the state officials. We are making provision for five or six state officers, expect to pay them liberal salaries, and that they will reside at the seat of government. The duties of these state officials are not so great as to debar them from performing these duties. They should have the welfare of the state at heart, and should take pride and delight in looking after the interests of the state. Parties have argued this question as though the board would have to attend to all the details relative to these various institutions. That is a mistake. The details are to be carried out by others. The Superintendent of Public Instruction has the management of the schools throughout the state but the details by others. So with the Normal school.,

There is a reason why we should create a board separate from the state officials. I am inclined to think that this State Normal school has been well managed but if the parties who had charge of it had been inclined to abuse their privileges, the state would have suffered for the reason that they have had it in their power to conceal their acts in reference to it. If you make the board transact the business at the state capital and have their actions a matter of public record at the seat of government, the legislature will have access to that record so as to correct abuses. This article is wrong in theory. It attempts to take certain matters which are under the control of the legislature, from out of the control of that body. If we attempt to put legislative matters in the constitution, then we must go into detail, and our constitution is a failure. Further than that, if we undertake to fix a matter in the constitution for all time, or until the constitution is amended we take it out of the power of the legislature to correct evils which may exist. We propose to provide for an annual legislature. Why do we do this? It is in order that the representatives of the people may meet at the capital once a year and look after their interests. There is no reason why these state officers cannot attend to all these duties. The Superintendent of Public Instruction has general control of the educational interests of the state, and he acts with the board, in order to advise with regard to his department, and if you create a Land Department, we have another state officer, and he is connected with this board and has charge of matters relating to the department. The officer who has charge of the Penitentiary is also a member of the board. We may incorporate one section in this constitution on the subject presented in this article, but when we step beyond that, we go beyond what we ought to do in this direction.

Mr. ROBINSON. Mr. Chairman. I am opposed to the section. I am also opposed to imposing these duties upon the state officers. I think when we require responsiblity at all, it should be direct responsibility. Now if we impose this upon the state officers, as this section proposes, the executive department will be over crowded. I believe in multiplying these boards. I think the expense is lessened, for one thing, I believe direct responsibility is attained, which is another thing. I believe there is enough material to create these boards of—that there are plenty of capable men to fill the positions who will not ask more than their mileage. I believe that there are gentlemen all over the state who will be proud to occupy these positions, and who will feel their responsibility more than if the board were provided in any other way. If the board is made up in this way, and is found to work badly, the legislature can abolish it. I would renew, Mr. Chairman, a motion which was made here, but I believe was not seconded, to re-commit this whole matter to the committee.

The CHAIRMAN. The chair is of the opinion we cannot re-commit in committee of the whole.

Mr. ESTABROOK. Mr. Chairman. If the gentleman will change his motion, I will be willing to support it. That is that it be committed to special committee number 5.

Mr. ROBINSON. Now make that motion, and I will second it.

Mr. MOORE. Mr. Chairman. I move it be referred to the 3 standing committees on education, school funds and lands, state institutions and public buildings and state lands other than school lands, numbers 22, 6, and 18.

The CHAIRMAN. Gentlemen. The motion is that the Committee do rise and recommend to the convention that this whole subject matter be referred to committees number 22, 6, and 18.

Mr. GRAY. Mr. Chairman. I hope this motion will not prevail. Now it is very evident that these committees never would and never could agree upon anything. Let us have this referred to a special committee of gentlemen chosen with reference to this special matter, so that they can afterwards come in and give to this house good reasons for their action. I hope a motion to refer this to a special committee of three or five, will prevail.

Mr. ROBINSON. Mr. Chairman. I move that when this committee rise and report this matter back to the convention, that it be referred to a special committee consisting of the chairmen of committees 6, 18 and 22.

The CHAIRMAN. That would be Messrs. Estabrook, Cassell and Woolworth.

Mr. ESTABROOK. Mr. Chairman. I move to add Mr. Thomas and Mr. Woolworth.

The CHAIRMAN. Does the gentleman from York, (Mr. Moore) accept?

Mr. MOORE. I do not.

The CHAIRMAN. The question is on requesting that it be referred to the three standing committees Nos. 22, 6 and 18.

The motion was not agreed to.

The CHAIRMAN. The question is now upon the motion of the gentleman from Lancaster asking that it be referred to the chairmen of the standing committees, Nos. 22. 6, and 18 Messrs. Myers, Woolworth, Thomas and Curtis.

Mr. LAKE. Mr. Chairman. I move to amend by inserting the words "that we do now arise."

Mr. STRICKLAND. Mr. Chairman. I move to amend by adding Mr. Speice to that committee.

The amendments were accepted and the motion was agreed to.

Mr. MANDERSON. Mr. President. The committee of the Whole have had under consideration the report of the committee on State Institutions and Public Buildings and have instructed me to report that they recommend that the subject matter under control of that committee be referred to a special committee consisting of the Chairmen of committees Nos. 22, 6, and 18, and Messrs. Woolworth, tee which I will read.

Mr. MYERS. Mr. President. I move that the report be received and the request granted.

The motion was agreed to.

Mr. MYERS. Mr. President. I hold in my hand a proposition which I ask to be referred to that committee which I will read:

"The Supreme Court shall appoint five regents for the University and Agricultural college and the same number of Regents for every state institution which Boards shall continue in office for three years, or until their successors in office are appointed: and said Boards shall report annually to the governor, who shall transmit the same to the legislature.

The PRESIDENT. The question is on referring this proposition to the special committee just raised.

The motion was agreed to.

Mr. McCANN. Mr. President. I wish to offer the following resolution and with the consent of the convention I will read it. (Leave.)

"Resolved, That the secretary of the Board of Regents of the State University be, and he is hereby requested to inform this convention on the following points, to-wit:

First. The amount of funds received by him belonging to the state and from what sources.

Second. The amount paid on account of buildings.

Third. The amount paid as mileage to members of the Board of Regents and how much to each.

Fourth. The amount expended for all other purposes."

Mr. SPEICE. Mr. President. I move the adoption of the resolution.

Mr. McCANN. Mr. President. I will state that I am here asking for information which is in my own knowledge, but I wish to come before this convention officially. I sir, acknowledge to have received $22.50 for my expenses as a member of that board. I will state that I do not wish to sit here silent and hear of large amounts being paid for the services of the Board of Regents without this convention knowing just what those expenses are. I undertake to say that I have been astonished this morning that one intelligent gentleman here, a lawyer who says he didn't know just how to get the information which I have asked for. I think sir, there is a great deal of buncomb connected with this discussion. We all know how how to reach these officers and know just what funds are used.

Mr. WOOLWORTH. Mr. President. I made the inquiry of my friend from Otoe (Mr. McCann) because at the end of the report of the Regents of the University it was stated the mileage was paid out of the general fund of the State because there was no funds in the treasury. I know but little about it, but as for buncomb, he knows that is an article I never deal in.

Mr. McCANN. I will state that I did not refer to the gentleman on my right (Mr. Woolworth) but did refer to the other gentleman on my left (Mr. Estabrook). I will state for the information of the gentleman on my right (Mr. Woolworth) that there is a large fund in the hands of the treasurer of the University.

Mr. HASCALL. Mr. President. To make the subject of the resolution full I would propose to amend by adding mileage "and other expenses."

Mr. McCANN. I accept the amendment.

Mr. ESTABROOK. John Phoenix said in leaving California he waved his hand and said "good-bye Colonel" and several men said "good-bye old fellow." When the gentleman (Mr. McCann) remarked that a gentleman of intelligence had remarked so and so, several gentlemen rose to their feet here. I inquire of a member of the Board of Regents about the amount of the pay, and he said to me "don't you know the law?" I answered " no, sir, that is just what I asked you for." "Well," said my friend "if you don't, it is time you did." That is just what I thought. I said I supposed they were appointed by the governor. "No sir," said he, "they are appointed by the legislature." I do insist still that it is a little close corporation, and I cannot tell today where to go to find out what the amount of the funds are.

The PRESIDENT. The Auditor has informed me that the gentleman is here who has the account of that matter.

Mr. ESTABROOK. Who is he?

Mr. PRESIDENT. A Mr. Davis I believe.

Mr. McCANN. No sir, Mr. McConnell, is secretary of the board.

Mr. ESTABROOK. There is another man (The President) that is ignorant. (Laughter.)

Mr. McCANN. We furnish information which cannot be obtained out of Estabrook's Revised Statutes.

The PRESIDENT. The question is on the passage of the resolution as amended.

The resolution was agreed to.

Mr. NEWSOM. Mr. President. I have a resolution and move its reference to the special committee just appointed.

The secretary read the resolution as follows:

There shall be elected at the first general election provided for in this constitution and every two years thereafter, one Superintendent of the penitentiary, one superintendent of the insane asylum, one land commissioner, and these officers together with the governor and attorney general shall constitute a Board of Commissioners whose duties it shall be the general supervision and control of all state institutions and public buildings and the care and sale of all lands appropriated for and belonging thereto.

The motion was agreed to.

Mr. PHILPOTT. I have a communication.

Communication read by the secretary as follows:

To the Honorable, the Constitutional Convention of the State of Nebraska:

Gentlemen:—

The following resolutions were adopted by the Nebraska Annual Conference of the Methodist Episcopal church at its last session, held in Lincoln, April 2d, 1871.

In compliance with the fourth resolution, we the committee appointed by the Conference respectfully present to your honorable body these resolutions:

(Signed.) H. T. DAVIS.

Chairman of Com.

Lincoln, July 15, 1871.

Resolved, First. That we are opposed to any and all legislation for or against the use of the Bible in the Public Schools of the state.

Second. That we are in favor of equal taxation of all property other than state, county and municipal possessions.

Third. That we urge the members of the Constitutional convention called by the legislature of this state to meet in June next to secure the above provisions by proper constitutional enactments thus removing these matters from the control of legislative action in the future.

Fourth. That a committee of three be appointed to present to the convention aforesaid the action and resolutions of this Conference and if opportunity is offered, to make a verbal explanation of the reasons therefor.

Mr. PHILPOTT. Mr. President. I move that resolution number two be referred to the committee on Finance, the rest to the committee on miscellaneous.

The motion was agreed to.

Mr. MOORE. I have a petition.

The secretary read the petition as follows:

To the Honorable Gentlemen composing the Constitutional convention of the state of Nebraska,

Gentlemen:

We the citizens of York and Hamilton counties respectfully ask that you engraft a clause into the constitution prohibiting the county commissioners of any county in the state from issuing bonds for the purpose of building or assisting to build railroads in the same.

Signed by G. K. Baker and 36 others.

Mr. BOYD. I move it be referred to the committee on state, county and municipal indebtedness.

The motion was agreed to.

Adjournment.

Mr. HASCALL. Mr. President. I move to adjourn.

The motion was agreed to, so the Convention at eleven o'clock and fifty minutes adjourned.

Afternoon Session.

The Convention met at two o'clock and was called to order by the President.

Special Order.

The PRESIDENT. Gentlemen: The special order of this hour is the report of the committee on Bill of Rights.

Mr. MANDERSON. Mr. President. In the same resolution that required the Bill of Rights should be a special order at two o'clock, I believe the bill of the Committee on Future Amendments was also a special order. I hope the Convention will take the latter bill first as Judge Wakeley is detained by business of importance for a short time and expressed a desire to take part in the discussion of the Bill of Rights. I make a motion to that efect.

The motion was agreed to.

The secretary read the first section of the Bill of Future Amendments as follows:

Sec. I Any amendment or amendments to this constitution may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of the members elected to each house. such proposed amendment or amendments shall be entered upon the journals, with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published weekly for three months immediately preceding the next election in at least one newspaper in every county in which a newspaper shall be published, and if in the legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the Secretary of State shall cause the same again to be published for the time and in manner aforesaid, and such proposed amendment or amendments shall be submitted to the electors of this state for adoption or rejection at the next election of members of the legislature in such manner as may be prescribed by law, and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of the state voting thereon such amendment or amendments shall become a part of the constitution; provided, that if more than one amendment be submitted they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

The first section was adopted.

The secretary read the second section as follows:

Sec. 2. Whenever two-thirds of the members elected to each house of the legislature shall by a vote entered upon the journals thereof concur that a convention is necessary to revise, alter, or amend the Constitution the question shall be submitted to the electors at the next general election. If a majority voting thereon at the election vote for a convention the legislature shall at the next session provide for a convention and shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers and provide for the payment of the same together with the expenses necessarily incurred by the convention in the performance of its duties.

The law submitting the question shall be published for the time and in the manner provided in the preceding section as to proposed amendments.

The second section was adopted.

The PRESIDENT. It will be seen by the 50th rule, that after the amendments reported by the committee of the whole shall have been acted on, it shall be open to amendment by the convention, and we are at that point now.

Mr. MYERS. Mr. President. I now move that this bill be ordered engrossed for the third reading.

The motion was agreed to and the bill ordered engrossed.

Mr. MYERS. Mr. President. I would enquire how long it will require to engross that bill, and whether any preparation has been made for the engrossing of it.

The PRESIDENT. It will necessarily have to be engrossed by an engrossing clerk, in a good round hand, and it will be done immediately.

Mr. GRIGGS. I move that we now proceed to the consideration of the Bill of Rights.

The motion was agreed to.

The secretary read the first section of the article, as follows:

"All by nature are free and independent, and have certain inherent and inalienable rights—among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just power from the consent of the governed.

The first section was adopted.

The secretary read the next section as follows:

Sec. 2. No person shall be deprived of life, liberty or property without due process of law.

The section was adopted.

The secretary read the next section, as follows:

Sec. 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No person shall be required to attend or support any ministry or place of worship, nor shall any preference be given by law to any religious denomination or mode of worship.

Section three was adopted.

The secretary read the next section, as follows:

Sec. 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty, and in all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

Section four was adopted.

The secretary read the next section, as follows:

Sec. 5. The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men, may be authorized by law.

Mr. ROBINSON. Mr. President. I move that the words "less than twelve men" be stricken out and insert "not less than six men."

The PRESIDENT. The question is upon the amendment offered by the gentleman from Lancaster.

Mr. MAXWELL. Mr. President. I trust that the amendment will not prevail.

The common law provides a jury of 12 men, and now we provide that a jury of less than 12 men may be caller in inferior courts.

Mr. GRIGGS. Mr. President. I am opposed to the amendment. I think the original is good enough. I think if we cannot trust the legislature to say that it shall not exceed twelve men, we cannot trust it with anything. I believe the people will be satisfied with it, as it is. It is not often less than six men will be called.

Mr. ROBINSON. Mr. President. In answer to the gentleman from Cass (Mr. Maxwell) I will say that I don't understand the provision will compel the party to take a jury of six men. If the parties to a suit can agree to take less than six, or go to trial without a jury at all, they can do so. What I meant is that a party may insist, he will not go to trial with a jury of less than six. I will remind the gentleman from Gage (Mr. Griggs) that we are laying down here, our rights—those rights which we can insist upon. I don't think that any legislature will ever dare to change the law in that regard, but sir, we are preparing a Bill of Rights, in which we propose to assert what we can claim. Let a man insist at least upon a jury of six men, if he desires it.

Mr. LAKE. Mr. Chairman. I think perhaps the object desired by the gentleman from Lancaster is a proper one. It seems to me the language proposed would not authorize a trial before a magistrate by a jury composed of less than six men, even if the parties themselves may agree to a less number. How would it read, "The right of trial by a jury of not less than six men may be authorized by the law." Now it seems to me this would preclude trial by a jury of less than six. This would be precluded by law. We now have a provision of this kind which will give a right to trial by a jury of less, even, than six men, where the parties agree. There is danger of that kind of a construction.

Mr. ROBINSON. (to Mr. Lake) Supposing the legislature should pass a law in pursuance of this resolution authorizing the right of trial by jury would a party have a right to waive this, and go to trial without a jury?

Mr. LAKE. Yes sir, parties, I suppose may agree to submit their differences to individuals; they may provide various ways to settle their difficulties; but the language here used may be susceptible of more than one construction, and if the gentleman from Lancaster (Mr. Robinson) is willing to leave the matter to the legislature, why not leave it as amended by the committee. I am not particular as to this, but we find there are gentlemen here upon this floor, who differ as to what the language may contain. I am willing to leave this to the wisdom of the legislature. I believe public sentiment, as reflected through the legislature will keep this matter where it ought to run.

Mr. ROBINSON. Mr. President. I withdraw my amendment.

Mr. MASON. I move to amend the section by adding the words "providing that the legislature provide a tribunal or board for the determination of the plea of insanity, wherever interposed in a criminal case, other than by a jury of twelve men." Before this question is voted upon by the Convention, I desire to submit briefly the reason why this apparently radical change is sought to be imposed in the law. First, insanity has been determined, generally, on no well settled principle and to call attention to this subject, I desire that the gentlemen of the Convention may know what has been the rule laid down heretofore. I read from Ray's Medical Jurisprudence of Insanity commencing on page 55.

Sec. 41. Criminal trials, in which insanity was pleaded in defense, have been generally so little known beyond the place of their occurrence that it is difficult to ascertain on what particular principles of the common law the decisions of American courts have been founded, though from all that can be gathered, it appears that their practice, like that of the British, has been diverse and fluctuating. In the trial of Lawrence, at Washington, in 1835, for shoooting at President Jackson, the jury were advised by the court to regulate their verdict by the principles laid down in the case of Hatfield, which had been stated to them by the district attorney. In the case of Theodore Wilson, tried in York county, Maine, in 1836, for the murder of his wife in a paroxysm of insanity, the court charged the jury that if they were satisfied the prisoner was not of sound memory and discretion at the time of committing the act, they were bound to return a verdict of acquittal. This is all that could be wished; and considering that two highly respectable physicians had given their opinion in evidence that the prisoner had some consciousness of right and wrong, and that the attorney general, though he admitted the existence of insanity in some degree, denied that it was of sufficient extent to exempt him from punishment, supporting his assertion on the authority of the leading English cases relating to insanity, this decision indicates an advance in the criminal jurisprudence of insanity that does credit to the humanity and intelligence of that court. In the trial of Cory, for murdering Mrs. Nash, in New Hampshire, 1829, Chief Justice Richardson, stated in his charge to the jury that the only question for them to settle was, "Whether he was of the same mind when the deed was done?"

Now Mr. President, I will not delay the time of this Convention in reading a great number of cases, but I desire to submit that the great number of judges in laying down the rule of law on this matter differ as widely as juries themselves, and when great judges differ where are we to look for a legal decision?

The same language was used by the same court on the trial of Prescott, for the murder of Mrs. Cochran, in 1834. In State of Connecticut v. Abbott (1841), the jury were instructed to acquit the prisoner if they found "that he was insane—had not sufficient understanding to distinguish right from wrong, and did not know that the murder of his wife was an offense against the laws of God and nature." In Commonwealth of Massachusetts v. Rogers (1843), the court Chief Justice Shaw, thus stated the rule of law. "A man is not to be excused from responsibility if he has capacity and reason sufficient to enable him to distingush between right and wrong, as to the particular act he is then doing, and a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty." "The question is whether the disease existed to so high a deagree, that for the time being, it overwhelmed the reason, conscience, and judgment, and whether the prisoner in committing the homicide acted from an irresistible and uncontrollable impulse." In People v. Kleim, New York, (1846), the court, Judge Edmonds, said that, to establish a defense on the ground of insanity, it must be clearly proved that the party accused was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. Also, if he have not intelligence and capacity enough to have a criminal intent and purpose, and if his moral or intellectual powers are either so deficient that he has not sufficient will, conscious, or controlling mental power, or if, through the overwhelming violence of mental desire, his intellectual power is for the time obliterated, he is not a responsible agent. In State v. Spencer, New Jersey, (1846), the court, Chief Justice Hornblower, declared that "if the prisoner, at the time of committing the act, was conscious that he ought not to do it, the law holds him responsible, and he cannot be exculpated on the ground of insanity, although on some subjects he may have been insane at the time." In People v. Freeman, New York, (1847), it was held that the prisoner was responsible if capable of perceiving that the act was contrary to law. In State v. Bender, Pennsylvania, (1850), the court said that the prisoner, to be acquitted on the ground of insanity, should have been so deranged that he could not appreciate the nature or consequence of the act he was committing; his mind must have been disturbed by disease or other natural cause, to an extent to deprive him of the power of reasoning on the subject of the act he was about to commit; and had not mind enough to reflect, think and know the difference between right and wrong. In State v. Knepley, Pennsylvania, (1850), the court said, that before any man can be exempted or relieved from responsibility for crime, he must have such alienation of mind as to entirely destroy his perception of right and wrong in regard to the particular act, or be laboring under such delusions or hallucination as controls his will and renders the commission of his offence, in his opinion a matter of duty or necessity. In State v. Windsor, Delaware, (1851), the court instructed the jury that the question before them was, whether the prisoner was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime. In State v. Clark, Connecticut, (1855), it was held that the prisoner was not accountable, if he had not capacity and reason enough to enable him to distinguish between right and wrong in this instance, to understand the nature, character, and consequence of the act, and to apply his knowledge to this case, not being overcome by an irresistible impulse arising from disease. In State v. Smith, Pennsylvania, (1858), the court held that the prisoner was irresponsible, if he were governed by an uncontrollable impulse, his will were no longer in subjection to his reason, owing to the excited and continued impetuosity of his thoughts, and the confusion of a mind impelled by disease and goaded by a sense of grievous wrongs. In People v. Thurston, New York, (1851), People v. Fyler, New York, (1855), State v. Shoo, Illinois, (1857), United States v. Holmes, Maine, (1858), the law as expounded by Chief Justice Shaw in Commonwealth v. Rogers, was adopted. In State v. Mosler, Pennsylvania, (1846), the court, Chief Justice Gibson, said that insanity, in order to exempt a person from punishment for criminal acts, must be so great in its extent or degree, as to be blind to the nature and consequence of his moral duty, and entirely destroy his perception of right and wrong. In United States v. McGlue, Massachusetts, (1851), the court, Mr. Justice Curtis, instructed the jury that the question for them to settle was, whether the prisoner understood the nature of the act, and knew he was doing wrong and deserved punshment.

The loose, vague, and contradicttory tests of that kind of insanity which alone can be regarded as a sufficient excuse for criminal acts, are strongly illustrated in this summary of American decisions. The cause of this curious fact will be sufficiently apparent on a little reflection. If metaphysicians who have made the rational mind their special study, widely differ in their accounts of its operations, could it be expected that men who have given little or no attention to the phenomena of insanity, should be more successful in ascertaining the character and connection of the thoughts and emotions which occupy the irrational mind? It is not strange that every step in their analysis of motives and impulses should be marked by hesitation and distrust and that tests of responsibility once set up with the strongest confidence, should be either utterly abandoned, one after the other, or limited by some indefinite qualifications. To this course our courts have been driven, more easily perhaps, than the English, because their sense of justice has been less controlled by authority and prescription.

They see the miserable victim of disease before them; they hear the story of his freaks and fancies from the lips of friends and neighbors, and the testimony in his favor of disinterested experts, with whom perhaps they may be personally acquainted. Thus the conviction of his insanity becomes irresistible, and they feel constrained to construe the law in such a manner as afford him its protection; and yet such a construction might not have been thought of had the general features only of the case been presented to them in their chambers. In this country as in England, the insufficiency of the old tests of responsibility has been generally recognized, and here all harmony of opinion ends. What the true test really is, remains as far from being settled as ever. The actual question in such cases is, how the various elements of responsibility have been affected by the presence of disease. To answer it correctly, there is implied, not only some knowledge of the constitution of the mind in its normal condition, but also a thorough and accurate knowledge of its manifestations while under the influence of disease. The former might be expected, in some degree, at least, in most men of a liberal culture, but the latter must necessarily be confined to persons who have made insanity their special study. It is, in fact, as strictly a professional matter as the effect of malaria on the nervous system; and equally unfit to be presented for investigation to a bench of judges. Here lies the foundation error of the courts, in supposing that the question of responsibility may be settled without the aid of scientific research and observation,—in supposing that men who never in their lives, perhaps observe very closely a single case of insanity; who know nothing of its various forms, nor of the laws which govern their origin and progress, are qualified to lay down general principles touching the measure of responsiblity which is left after reason has been driven from her throne, or reduced to share a divided empire with the caprices and impulses of disease. The results of this error are painfully exhibited in the summary of decisions given in the preceding sections. The loose and indefinite phraseology where terms should be precise and well defined; the frequent recurrence to the same point, as if fearful of saying too much or too little; the conflicting tests and the qualifications attached to them,—all this inspires no confidence, and consequently, leads to no uniformity of opinion. It is a truth which no assumption of superior wisdom, no blind conservatism can destroy, that with hardly a single exception, these "rules of law" on the subject of insanity, are in conflict with the well settled facts of mental disease. They would never have been made, we are quite sure, by persons practically acquainted with the operations of the insane mind. To such it is well known, that in every hospital for the insane all patients capable of distinguishing between right and wrong, knowing well enough how to appreciate the nature and legal consequence of their act acknowledging the sanctions of religion, and never acting from unstable impulses but deliberately and shrewdly. Is all this to be utterly ignored in courts of justice?

Sec. 43. The frequency with which insanity is pleaded in defense of crime, the magnitude of its consequence to the parties concerned and the perplexity in which the discussions it occasions involve the minds of judges and jurors, are ample reasons why the law relative to insanity should be ample and easily understood—a result that can only be obtained by direct legislative enactments. It is time for the legislature to determine what, amid the mass of conflicting opinions on this subject shall be the law of the land; and thus no longer permit the lives and liberties of people to be suspended on the dicta of men, whose knowledge of insanity was exceedingly imperfect, and which have not even the merit of uniformity and consistency. It may be well, therefore, to see what has been the legislation of various enlightened nations, in reference to this subject, inasmuch as it may furnish valuable hints for our own.

In some the legislator has been contented with indicating, by some popular, general phrase, that condition of mind which the judge may consider as freeing from responsibility.

The Bavarian code (1813) follows this course, as well as the code of Basle, promulgated in 1835. In the latter we find the following words: "Minors and those laboring under general mania, or hallucinations, cannot be punished as criminals, nor, generally speaking, can any others be punished, who have committed a crime while deprived of the use of their minds." Art. 2. Very nearly the same language is used in describing suicides as are exempted from punishment by reason of mental disorders, in the code of Turin (1835), Art. 63, and in the proposed Hanoverian code, Art. 83. In other codes, general terms alone are used in describing the mental condition of such as are irresponsible. Thus, in the Saxon code we find these words: "Responsibility is annulled in persons who are deprived of the use of reason by mental disease." Art. 65. It is sufficient objection to such enactment that, in any particular trial, no two persons could be found to agree respecting the practical application of such terms as, deprived of the use of reason, bereft of understanding, etc., and how many judges and juries would see in the unfortunate monomaniac before them, who, though stained with the blood of a fellow man whom some wild delusion has prompted him to kill, is still correct and coherent in his discourse, staid and dignified in his demeanor, ready and shrewd in his replies, a being deprived of the use of his reason, or bereft of his understanding? We have seen too often the deplorable failure of such general terms to protect the miserable subject of disease, under the operation of English common law, to recommend their use to the legislature. In some codes an attempt is made to avoid this objection to general terms, by mentioning various mental diseases as illustrations of the meaning they are to convey. Thus, the proposed Wurtemburg code contains the following provisions: "An illegal act is exempt from punishment if committed in a state of mind in which the use of reason is taken away; to this state belong, chiefly general mania, general and partial hallucination, entire imbecility, and complete confusion of the senses or understanding." Art. 91. In the code of the grand-duchy of Hesse, proposed in 1863, we find the following provisions: "By reason of their impaired responsibility, punishment cannot be inflicted on those who commit fiendish acts in a state of sleep, of somnambulism, of general mania, of hallucination, of imbecility, or of any other mental disorder, which either takes away all consciousness respecting the act generally and its relation to penal law, or in conjunction with some peculiar bodily condition, irresistibly impels him while completely unconscious, to violent acts." Art. 29 in the code of the grand-duchy of Baden, it is enacted as follows: "Responsibility is annulled in that condition, as the former, for the difficulty will be as great in the one as in the other. of settling the exact meaning of the particular term."

Many a case will occur that will not be unanimously referred to some one of the above mentioned affections. To avoid the difficulties incumbent on the use of such terms, and to bring the wretched subjects of mental disease under the protection of the law, without discrimination, in which, either a conciousness of the criminality of the offense, or the free will of the offender is taken away.

Art. 65. "To the condition which annuls responsibility on the strength of the 65th Art. belong chiefly imbecility, hallucination, general mania, distraction, and complete confusion of the senses or understanding."

Art. 67. Some what similar is the phraseology used by the code of Lucerne, in Switzerland. This method is liable to precisely the same objection, the legislator has in some instances, made the single fact of the presence of disease, sufficient to annul criminal responsibility. In Livingston's code, it is provided that—"No act done by a person in a state of insanity can be punished as an offense." The revised statutes of the state of New York contain the same words. The revised statutes of Arkansas provides that a lunatic or insane persons without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged. The French penal code is equally simple. There can be no crime nor offense if the accused were in a state of madness at the time of the act. If we insert after the word insanity, the following words, "or any other condition of mind in which the person is involuntarily deprived of the consciousness of the true nature of his act," in order to protect him from the consequences of acts committed in a state of sleep or somnambulism, it may be doubted whether any other provision would better promote the purpose of justice, than that of Livingston's code. Under this law, when strictly applied, if the existence of insanity is once established, the responsibility of the party is taken away, and all nice discussions concerning the effect of this or thatkind of degreeof mentalderangement, and the exact measure of reason that has been left or taken away, are thus effectually precluded. It cannot bedeemed that an insane person may be actually guilty of a crimnal act, his insanity being very partial, and the act not being within the range of its operation, while by the letter of the law, he must be acquitted. The only way of avoiding this evil, would be to add something like the following: "Unless, it can be proved that the act was not the offspring of the insanity." True, the fact of insanity would be left, as it now is, with the jury to decide, but as they would no longer be puzzled with metaphysical distinctions between total and partial insanity, and engaged in nice estimates of the knowledge of good and evil, of rights and wrongs, of the power of design possessed by the accused, their inquiries would be narrowed down to the single fact of mental impairment on a certain point—a duty much less remote from the train of their ordinary habits and pursuits. Thus a great object would be gained, for the more that is provided by statute and the less that is left to judicial discretion, the greater is the benefit afforded by law.

Sec. 44. As the conclusions of the jury relative to the existence of insanity must necessarily be founded on the testimony afforded by the parties, it is a subject of the utmost importance, by whom and in what manner this testimony shall be given. If the decision of this point were purely a matter of facts, the only duty of the jury would be to see that they were sufficient for the purpose, and proceeded from authentic sources but on the contrary, it is a matter of inference to be drawn from certain data, and this is a duty for which our juries, as at present constituted, are manifestly unfit. That a body of men taken promiscuously from the common walks of life should be required to decide whether or not certain opinions and facts in evidence prove derangement of mind, or in other words, to decide a professional question of a most delicate nature and involving some of the highest interest of man, is an idea so preposterous that one finds it difficult at first sight to believe that it ever was seriously entertained. Such however, is made their business and in the performance of it, there is but one alternative for them to follow—either to receive with the utmost deference the opinions of those who have a professional acquaintance with the subject, or to slight them altogether, and rely solely on their own judgment of the facts. The latter course has some times been adopted, though no one, probably, personally concerned in the issue of the case would congratulate himself on their choice, unless especially anxious to become a victim of ignorance and obstinacy. But in a large proportion of cases the medical testimony which is given in the shape of opinions, though rather an anomaly in evidence that courts have been sorely puzzled at times whether to admit or reject, is mostly relied upon, and determines the verdict of the jury. It is, perhaps, of little consequence, who testifies to a simple fact, that it requires only eyes to see, or ears to hear; but it is all very different with the delivery of opinions that are to shape the final decision. As this requires an exercise of judgment as well as observation, there ought to be some kind of qualification on the part of those who render such opinions, not required of one who testifies to mere facts. The understanding certainly is, that their habits, pursuits, and talents have rendered them peculiarly competent for this high duty, for, in spite of the power of cross-examinations, these constitute the only pledge that can be had of its correct and faithful performance. But as the law makes no exclusion, and the witness stand is open to any one whom the parties may choose to call, it frequently happens, that the witness has nothing but his opinions and the authority they ought to possess. And even when he may have been preceded by the shadow of a great reputation, the jury may not know, nor be able to discover how much of that reputation is factitious; and in consequence may be induced to confide in opinions which, from a different quarter, they would have listened to with feelings of doubt and distrust. It is true the law requires that such opinions should be founded on facts, but who is to decide whether the fact is a sufficient foundation for the opinion, or, indeed, has any relation to it at all?"

In each of these states as well as in France is established a physician to whom the custody of the individual is committed and they determine the question of his insanity, and it is not left for this uncertain determination by a jury who are not skilled in this matter. I appreciate the fact that a man may be insane when the act was committed and sane the day he is put upon trial, but how much greater would be the satisfaction to civil society if the individual who sets up this plea was committed to the custody of those who had charge of the insane if you please, with eleven other learned physicians, there to be retained a sufficient length of time for them to satisfy their scientific minds whether he was insane or not. I move this amendment for several reasons. I have been requested to do so by the medical society of this state, I have been requested to do so by several distinguished medical men of this state. Second, it meets with my own judgment and approval. Lastly, because I think society would be more secure, crime more easily detected and the specious plea of insanity less frequently interposed.

Mr. MYERS. Mr. Chairman. I had flattered myself we would be able to get the Bill of Rights through without having any more radical amendments offered, least of all by the honorable chairman of the committee who had it in charge, and who has presented to this convention a bill that has received less amendments than any other of which I have any knowledge. I did not suppose that at the heel of its passage at this late day, that a motion of this importance would be thrust upon the Convention, that no debate would be provoked which had not been disposed of by the Committee of the Whole. Now this is a very great innovation upon the practice of courts, establishing a new court for the trial of individuals charged with crimes, supposed to be insane, that they either have an ordinary affliction of lunacy, or what has recently been discovered in New York as kleptomania, a partial degree of lunacy to get some murderer from the gallows. I do not think the records can furnish a case where an insane man has been executed for a capital offense, but I believe the records will show that many murderers who were sane have been dragged from the gallows on the score of insanity. Mr. Chairman, I am opposed to an increase of courts. The whole jurisprudence of England is done by about twenty-five or thirty judges, and we are told that the roll of her drum is heard in the four quarters of the earth, and that the sun never sets on her vast possessions yet that great Empire, England, has only about twenty-five or thirty judges to transact its business, and her courts have neither been increased or diminished to a time "when the memory of man runneth not to the contrary." When William the Conqueror came, when the Battle of the Boyne was fought in Ireland, when the bloody Jeffrey sat upon the bench down to the present day there have been no additions to the regularly organized courts of that great Empire. Why can we not pursue the same steadfast old practice of law in the courts that we have? Why don't they do as they did in New York in the case of Ruloff the learned murderer? Why don't they pursue the course adopted in Massachusetts when Prof. Webster, another learned murderer, assumed the protecting cloak of lunacy, for the brutal murder of Dr. Parker. I believe the eminent and learned gentleman who brought this forward did so in the interest of humanity, and I do not apply these remarks to him as a reflection upon his judgment, but I differ with him as to the propriety of instituting a new court for the trial of a new disability that will prevent a man from atoning to the laws of his country for the commission of crimes. I am not in favor of opening a door for their escape. Let it be referred to three gentlemen of the medical profession, let them investigate that individual philosophically and I believe truly.

Mr. GRAY. Mr. Chairman. I rise not for the purpose of debating this question which has been suddenly sprung, but rather to call the attention of the Convention to a few facts or principles, whichever they may be called. It seems to me to create a court for the determination of this particular issue which may arise in criminal cases is in fact. curtailing the right of trial by jury, qualifying that right which has been handed down to us from time immemorial. The principles upon which the right of trial by jury rests, as I understand it, is that every man shall be tried by his peers, hence he is not to be tried by a learned lawyer presiding upon the bench, nor by a number of them, nor should he in pursuance of that principle be tried as to any one of these issues by a learned physician. The jurors have the assistance of experts upon every branch. If questions of insanity rise, they may and do have the assistance of experts, the learned physicians upon that branch, they have the assistance of the court itself upon every question that arises and more especially upon questions of law. Now then if the jury, with the assistance they have, is incompetent to determine upon the issue of insanity, so they are incompetent to determine upon an ordinary question of law that may arise in the case. Mr. President, I have said enough to call to the recollection of the members of this Convention this particular question, and therefore I am disposed to leave it. The question has been sprung upon us so suddenly that I am unprepared. But I hope gentlemen will stop and reflect before they make this innovation.

Mr. ABBOTT. I rather hope this thing will prevail because no matter how frivolous a case I have I interpose a plea of insanity and get it.

Mr. TOWLE. I hardly know whether to vote for this amendment or not. Why, it seems to me that the views of the gentleman from Dodge (Mr. Gray) should not deter us from voting as we please. When a plea of insanity is interposed we may have the most scientific men from all over the state; men who have made it a life-long study; men who are familiar with every phase of insanity. Well, they are congregated together, they take careful attention and make a direct enquiry into the particulars of this case; and if they find that the person who is accused is not insane, he is thrown back to the court again and tried by an ordinary jury of twelve men. Many criminals in late years, have escaped the meshes of the law under the plea of insanity. I believe, Mr. Chairman, that this is an innovation; but it is not for the best. It is not making a new court as the gentleman from Douglas says, because it will be tried in our district courts and other courts already established. But the jury will be composed of men who are calculated and presume to know every particular, and every phase of insanity. It is in fact, giving the prisoner another chance of his life, and giving him trial before a jury.

Mr. MANDERSON: Will the gentleman inform us whether he is for or against the amendment?

Mr. TOWLE. It is not particularly necessary that I should say that if the tendency of my remarks was favorable to the amendment I naturally should be in favor myself.

Mr. GRIGGS. Will the gentleman from Otoe (Mr. Mason) answer one question? Will the jury of physicians supplant the ordinary jury, or would they, after the trial by this jury, go back to a trial by a common jury?

Mr. MASON. If the article is adopted without the amendment. If the amendment prevail, the same rule would apply unless the legislature in their wisdom, should see fit to establish a board for a determination. It would be a latent power, invested in them by virtue of the constitution. I do not urge this upon the convention. That is, I do not wish to influence the judgment of anybody because it is an innovation. I offered this amendment out of respect for the teaching and ability of the gentleman who proposed it and sent it here with the authorities, but few of which I have submitted on this question. And while I think it is a step in the right direction and this plea of insanity should always be determined by skilled physicians, I am like my friend Mr. Myers, from Douglas, generally opposed to change—rather abiding by the evils that are than taking the advantage of fleeing to evils we know not of. It is sent here from a very respectable authority. While I think it would be well, yet I have doubts whether it would work well in practice.

Mr. ESTABROOK. I shall vote with the gentleman from Otoe then, simply for the reason that it is new.

Mr. MYERS. I now rise to the previous question. I move the previous question.

The motion was agreed to.

The PRESIDENT. The question now is upon the adoption of the amendment of the gentleman from Otoe.

The ayes and nays were demanded and the secretary proceeded to call the roll.

The President announced the result,—Ayes, 18; noes, 29; as follows:

AYES

Campbell,
Cassell,
Estabrook,
Gibbs,
Granger,
Hascall,
Kilburn,
Mason,
Moore,
Newsom,
Philpott,
Robinson,
Stevenson,
Stewart,
Sprague,
Spiece,
Shaff,
Towle.—18.

NAYS

Abbott,
Ballard,
Boyd,
Curtis,
Eaton,
Gray,
Griggs,
Kenaston,
Kirkpatrick,
Lake,
Ley,
Lyon,
Majors,
Manderson,
Maxwell,
Myers,
McCann,
Neligh,
Parchin,
Price,
Reynolds,
Scofield,
Thomas,
Thummel,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth.—29.

Absent and Not Voting.

Grenell
Hinman,
Parker,
Tisdel.

Leave of Absence.

Mr. MANDERSON. Mr. President. If I may be permitted, I will state that I promised Mr. Tisdel I would ask leave of absence until Monday next.

Leave granted.

Special Order Resumed.

The PRESIDENT. The question now is upon the adoption of the fifth section.

The Secretary read the next section as follows:

Sec. 5. The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases and misdemeanors before justices of the peace and inferior magistrates by a jury of less than 12 men, may be authorized by law.

Section five adopted.

The Secretary read the next section as follows:

Sec. 6. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched and the persons or things to be seized.

Section six adopted.

The Secretary read the next section as follows:

Sec. 7. All persons shall be bailable by sufficient securities, except for treason and murder, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it.

Section seven adopted.

The Secretary read the next section as follows:

Sec. 8. No person shall be held to answer for criminal offense, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger unless on a presentment of indictment of a grand jury on information of a public prosecutor, and provision shall be made by law for the empanelling of grand juries whenever the respective courts or judges shall order.

Section eight adopted.

The Secretary read the next section as follows:

Sec. 9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

Section nine adopted.

The Secretary read the next section as follows:

Sec. 10. No person shall be compelled in any criminal case to give evidence against himself, or twice put in jeopardy for the same offense.

Mr. SPRAGUE. Mr. President. I move to amend by inserting the word "be" before the word "twice," in the second line.

Amendment agreed to and the section as amended adopted.

The Secretary read the next section as follows:

Sec. 11. All penalties shall be proportioned to the nature of the offense; and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offense committed within the same; nor shall cruel and unusual punishment be inflicted.

Mr. ROBINSON. Mr. President. I move to amend the section by making the word "punishment" in the 4th line "punishments".

Amendment agreed to, and the section as amended adopted.

The Secretary read the next section as follows:

Sec. 12. No person shall be imprisoned for debt, arising out of, or founded on a contract express or implied, except in cases where there is strong presumption of fraud.

Section twelve adopted.

The Secretary read the next section as follows:

Sec. 13. Private property shall ever be held inviolate, but subservent to the public welfare. When taken, or damaged in time of war, or other public exigency imperatively requiring its immediate seizure, or for the purpose of making or repairing roads which shall be open to the public without charge, a compensation shall be made to the owners in money and in all other cases a compensation shall be first made in money or first secured by a deposit of money. Such compensation shall in every case be without deduction for benefits to any property of the owner and when not made by the state shall be assessed by jury in such manner as shall be prescribed by law. The fee of lands taken for railroad tracks without the consent of the owner thereof shall remain in such owners subject to the use for which it was taken.

Mr. LAKE. Mr. President. I move to amend Sec. 13, by inserting in the phrase "without deductions for benefits" the word "general" before the word "benefits."

The PRESIDENT. Gentlemen, The question is upon the amendment.

The ayes and nays being demanded the Secretary proceeded to call the roll.

The President announced the result. Ayes, 16; nays, 30, as follows:

AYES.

Boyd,
Estabrook,
Griggs,
Hascall,
Lake,
Ley,
Lyon,
Manderson,
Myers,
Neligh.
Reynolds,
Spiece,
Stewart,
Thummel,
Thomas
Wakeley.—16.

NAYS,

Abbott,
Ballard,
Campbell,
Cassell,
Curtis,
Eaton,
Gibbs,
Granger,
Grenell,
Gray,
Kenaston,
Kilburn,
Kirkpatrick,
McCann,
Majors,
Maxwell,
Moore,
Newsom,
Philpott,
Price,
Robinson,
Scofield,
Shaff,
Sprague,
Stevenson,
Towle,
Vifquain,
Weaver,
Wilson,
Woolworth.—30.

ABSENT NOT VOTING.

Hinman,
Mason,
Parchin,
Parker,
Tisdel,
Mr. President.—6.

So the amendment was not agreed to.

Mr. ROBINSON. Mr. President. I move to strike out the words "shall be," in the fourth line, and insert the word "are."

Mr. HASCALL. Mr. President. I am satisfied that it is right as it is. It relates to roads which, in the future shall be opened.

The PRESIDENT. The question is upon the amendment of the gentleman from Lancaster (Mr. Robinson.)

Mr. GRIGGS. Mr. President. I think this relates to roads which shall be opened in the future. I think it is right.

Mr. MASON. Mr. President. I have just returned to the chamber, having been absent when the last vote was taken, in which the ayes and nays were demanded. I desire to vote against the word "general" being inserted before the word "benefits" in the section last read.

("Can't vote. Can't vote!")

The PRESIDENT. It seems the gentleman is not granted leave. The question is on the amendment offered by the gentleman from Lancaster, (Mr. Robinson.)

The amendment was not agreed to.

The PRESIDENT. The question is on the adoption of section thirteen.

Section thirteen was adopted.

The Secretary read the next section as follows:

Sec. 14. No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

The PRESIDENT. The question is on the adoption of section fourteen.

Section fourteen was adopted.

The Secretary read the next section as follows:

Sec. 15. The military shall be in strict subordination to the civil power.

The PRESIDENT. The question is on the adoption of section fifteen.

Section fifteen was adopted.

The Secretary read the next section as follows:

Sec. 16. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war except in the manner prescribed by law.

The PRESIDENT. The question is upon the adoption of section sixteen.

Section sixteen was adopted.

The Secretary read the next section as follows:

Sec. 17. The people have a right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for a redress of grievances.

The PRESIDENT. The question is on the adoption of section seventeen.

Section seventeen was adopted.

The Secretary read the next section as follows:

Sec. 18. All elections shall be free and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.

The PRESIDENT. The question is on the adoption of section eighteen.

Section eighteen was adopted.

The Secretary read the next section as follows:

Sec. 19. Treason against the state shall consist only of levying war against the state, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnessed of the same overt act, or on confession in open court.

The PRESIDENT. The question is on the adoption of section nineteen.

Section nineteen was adopted.

The Secretary read the next section as follows:

Sec. 20. The writ of error shall be a writ of right in all cases of felony, and in all capital cases shall operate as a supersedes to stay the execution of the sentence of death until the further order of the supreme court in the premises.

The PRESIDENT. The question is on the adoption of section twenty.

Section twenty was adopted.

The Secretary read the next section as follows:

Sec. 21. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debts or liability.

Mr. WAKELEY. Mr. President. I move to amend this section by striking out the letter "s" from the word "debts."

The Convention was divided and the amendment was agreed to.

The PRESIDENT. The question is on the adoption of section twenty-one as amended.

Section twenty-one was adopted.

The Secretary read the next section as follows:

Sec. 22. Aliens who are, or may hereafter become bonafide residents of this state, shall enjoy the same rights in respect to possession, enjoyment and inheritance of property as native born citizens.

The PRESIDENT. The question is on the adoption of section twenty-two.

Section twenty-two was adopted.

The Secretary read the next section as follows:

Sec. 23. All courts shall be open and every person for an injury done him in his land, goods, person or reputation shall have remedy by due course of law, and justice administered without denial or delay.

The PRESIDENT. The question is upon the adoption of section twenty-three.

Section twenty-three was adopted.

The Secretary read the next section as follows:

Sec. 24. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

The PRESIDENT. The question is on the adoption of section twenty-four.

Section twenty-four was adopted.

The Secretary read the next section as follows:

Sec. 25. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

The PRESIDENT. The question is on the adoption of section twenty-five.

Section twenty-five was adopted.

The Secretary read the next section as follows:

Sec. 26. This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people.

The PRESIDENT. The question is upon the adoption of section twenty-six.

Section twenty-six was adopted.

The Secretary read the preamble as follows:

PREAMBLE.

We the people of the state of Nebraska—grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavor to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and posterity, do odain and establish this constitution for the state of Nebraska.

Mr. ROBINSON. Mr. President. I move to strike out all the parenthesis, that is, commencing with the word "grateful" to and including the word "generations." It is a mere repetition and I desire to have it struck out notwithstanding the example of the great state of Illinois.

Mr. GRIGGS. Mr. President. I am not in favor of striking that out. When the people of Nebraska cannot be thankful to Almighty God for his blessings, I think they are pretty hard up.

The PRESIDENT. The question is on the motion to strike out.

The "ayes" and "nays" were demanded, the vote was taken and the result was announced.—"Ayes," 2; "nays," 44, as follows:

AYES.

Estabrook,
Robinson,

NAYS.

Abbott,
Ballard,
Boyd,
Campbell,
Cassell
Curtis,
Eaton,
Gibbs,
Granger,
Gray
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Mason,
Manderson,
Maxwell,
Moore,
Myers;
Neligh,
Newsom,
Parchin,
Philpott,
Price,
Reynolds,
Scofield,
Shaff,
Sprague,
Spiece,
Stevenson,
Stewart,
Thummel,
Thomas,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth.—44.

ABSENT OR NOT VOTING.

Grenell,
Hinman,
Majors,
Parker,
Tisdel,
Mr. President.—6.

Mr. GRIGGS. Mr. President. I move to insert "a" before the word "blessing" in fourth line.

The motion was agreed to.

The PRESIDENT. The question is on the adoption of the Preamble.

The Preamble was agreed to.

Mr. STEWART. Mr. President. I move the article be engrossed for a third reading.

The motion was agreed to.

Mr. MAXWELL. I move that the Convention now go into Committee of the Whole on the report of the Judiciary committee.

The PRESIDENT. The bill on Future Amendments has been engrossed and is ready to be passed.

Mr. MAXWELL. I will withdraw my motion.

The secretary read the article as follows:

ARTICLE.

Sec. 1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives and if the same shall be agreed to by a majority of the members elected to each house, such proposed amendment or amendments shall be entered upon their journals with the yeas and nays taken thereon, and the Secretary of State shall cause the same to be published weekly for three months immediately preceding next election in at least one newspaper in every county in which a newspaper shall be published, and if in the legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the Secretary of State shall cause the same again to be published for the time and in the manner aforesaid, and such proposed amendment or amendments shall be submitted to the electors of this state for adoption or rejection at the next election for members of the legislature, in such manner as may be prescribed by law, and if the people shall approve and ratify such amendment or amendments by a majority of qualified voters of this state voting thereon, such amendment or amendments shall become a part of the constitution; provided that if more than one amendment be submitted they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

Sec. 2. Whenever two-thirds of the members elected to each house of the legislature shall by a vote entered upon the journals thereof concur that a convention is necessary to revise, alter or amend the constitution, the question shall be submitted to the electors at the next general election. If a majority voting thereon at the election vote for a convention, the legislature shall at the next session provide for a convention and shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same together with the expenses necessarily incurred by the convention in the performance of its duties.

The law submitting the question shall be published for the time and in the manner provided in the preceding section as to proposed amendments.

Mr. ROBINSON. Mr. President. I move to strike out the word "the" before "state" in fourth line.

Mr. ESTABROOK. Mr. President. I object for one reason, that is for the purpose of making a motion that this lay on the table for the present until we can have a committee on enrolled bills. No one knows whether it is correctly enrolled or not.

Mr. McCANN. Mr. President. This committee on enrolled bills was intentionally left out. In the Illinois convention, bills were referred to the Committee on Revision and Adjustment. I therefore move that the engrossing and enrolling be referred to that committee.

The PRESIDENT. The bill having been engrossed and read a third time, the question is on its passage.

Mr. MASON. I suggest the importance of having an engrossing and enrolling committee. I move to raise such committee, and I would just say that I do not want to be on that committee. I wish it could consist of printers and proof readers so far as there are any such in the convention, and charge them with the special duty of seeing that all amendments made in the committee of the whole are properly engrossed; and I have found, in legislative bodies that this class of individuals will detect an error quicker than I can myself. Therefore I move that when the President raise this committee he appoint this class of men. I would say three.

Mr. MYERS. Mr. President. I call for the order of the day. Unless gentlemen go on regularly, we never will get through. The motion of the gentleman from Otoe, I understand, is to lay this bill on one side in order to appoint the committee.

Mr. MASON. It is proper now to enroll or engross this bill before passing.

The PRESIDENT. It has been enrolled and is on its passage.

Mr. MASON. Then I would insist.

Mr. MYERS. Mr. President. I make a motion that I think will reach the gentleman's object. That this bill be laid aside now for the purpose of allowing the gentleman from Otoe to make his motion for the appointment of a committee on enrollment.

Mr. GRIGGS. It is my understanding that this bill has already been engrossed, and that it could not now go to an enrolling and engrossing committee, and I do not see how that committee could have anything to do with it.

Mr. MASON. Who knows it? I can't say it is properly engrossed. I want the committee to take this report and carefully compare with the amendments of the committee of the whole.

The motion of Mr. Myers was agreed to.

Mr. MASON. Now I move that the chair appoint a standing committee to be called "The Engrossing and Comparing Committee," to consist of three.

Mr. ESTABROOK. I would suggest that the committee be called Engrossing and Enrollment Committee.

Mr. MASON. I accept that.

The motion was agreed to.

The PRESIDENT. The question is upon referring this Article to the committee named.

The motion was agreed to.

Committee of the Whole.

Mr. MYERS. Mr. President. I move we now go into committee of the whole to consider the report of the Legislative committee.

The motion was agreed to.

So the convention went into the committee of the whole upon the Legislative Article, with Mr. Scofield in the chair.

ARTICLE.

Legislative Authority, and Election.

Sec. 1. The legislative authority of the state shall be vested in the senate and house of representatives; both to be elected by the people. The senate shall not exceed thirty-three senators, nor the house of representatives more than one hundred members. The representatives shall be chosen annually, by the citizens of each county respectively, on the Tuesday succeeding the first Monday in November. Senators shall be elected for the term of three years, and representatives for the term of one year from the day next after their general election.

Enacting Clause.

Sec. 2. The enacting clause of all bills shall be: "Be it enacted by the legislature of the state of Nebraska;" and no law shall be enacted except by bill.

No bill shall be passed unless by the assent of a majority of all members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal.

No bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed plainly and clearly in the title.

Enumeration and Apportionment.

Sec. 3. An enumeration of the inhabitants of the state shall be taken under the direction of the legislature in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter, and the districts shall be so altered by the legislature at the first session after the return of every enumeration that each senatorial district shall contain, as nearly as may be, an equal number of inhabitants excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district.

The members of the house of representatives shall be apportioned among the several counties of the state by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens and Indians not taxed, and shall be chosen by districts.

The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature and apportioned among the several counties according to the number of inhabitants in each.

Election of Senators.

Sec. 4. The senators shall be chosen for three years, by the citizens of the several senatorial districts, at the same time, in the same manner, and at the same place, where they shall vote for representatives.

Sec. 5. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the districts formed as hereinafter directed, according to the number of inhabitants in each as shown by the United States or state enumeration, and shall never be less than one-fourth nor greater than one-third of the number of representatives.

Sec. 6. The senators shall be chosen in districts to be formed by the legislature, each district containing such a number of inhabitants as shall be entitled to elect not more than three senators. When a district shall be composed of two or more counties they shall be adjoining. No city or county shall be divided in forming a district.

Who are Eligible.

Sec. 7. No person shall be a senator who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the state three years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state, and no person elected as aforesaid, shall hold said office after he shall have removed from such district.

Senatorial Classes.

Sec. 8. Immediately after the senators shall be assembled in consequence of the first election, subsequent to the first enumeration, they shall be divided by lot, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year.

Time of Meeting.

Sec. 9. The general assembly shall meet in the capitol on the first Tuesday of January in every year, unless sooner convened by the governor.

Legislative Officers and Contested Elections.

Sec. 10. Each house shall choose its president and speaker, and other officers. Each house shall judge of the qualifications of its members. Contested elections shall be determined by a committee to be selected, formed and regulated in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a less number may adjourn from day to day and be authorized by law to compel the attendance of absent members, in such manner and under such penalties as may be provided.

Disqualification of Senators and Members.

Sec. 11. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature.

If any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office civil, or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Disqualification for Office.

Sec. 12. No member of the legislature shall receive any civil appointment within this state, or to the senate of the United States, from the governor the governor and senate, or from the legislature, during the time for which he shall have been elected; and all such appointments, and all votes given for any such member for any such office or appointment, shall be void.

Pay and Mileage of Members of the Legislature.

Sec. 13. The members of the legislature shall receive for their services a sum not exceeding four dollars per day, from the commencement of the session; but such pay shall not exceed in the aggregate four hundred dollars for per diem allowance, except in proceedings for impeachment. When convened in extra session by the governor they shall receive four dollars per day. They shall receive the sum of one dollar for every ten miles they shall travel in going to and returning from the state capital, on the most usual route.

The president of the senate and speaker of the house of representatives shall, in virtue of their offices, receive an additional compensation equal to one-third of their per diem allowance respectively.

Persons Ineligible as Members of the Legislature.

Sec. 14. No person liable for public monies unaccounted for shall be eligible to a seat in either house of the legislature, or to any office of profit or trust until he shall have accounted for and paid over all sums for which he may have been liable.

Crime and Disqualification.

Sec. 15. No person shall be eligible to any office of profit or trust, nor shall be permitted to exercise the right of suffrage within this state, who shall have been convicted of bribery, perjury, or other infamous crime.

Impeachment.

Sec. 16. The house of representatives shall have the sole power of impeachment, but a majority of all the members elected must concur therein.

All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence.

When the governor of the state is tried the chief justice shall preside.

No person shall be convicted without the concurrence of two-thirds of the senators elected, but judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, profit, or trust under this state; but the impeached shall nevertheless be liable to indictment and punishment according to law. No officer shall exercise his office after he shall have been impeached, until he shall have been acquitted.

Sec. 17. The governor, secretary of state, auditor, treasurer, judges of the supreme and districts courts, and all other elective state officers shall be liable to impeachment for any misdemeanor in office.

Oath of Office.

Sec. 18. Members of the legislature, and all other officers elective and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the state of Nebraska, and that I will faithfully discharge the duties of the office of ———with fidelity, and according to the best of my ability.".

Bills for Governor and Objections.

Sec. 19. Every bill which shall have passed both houses shall be presented to the governor. If he approve he shall sign it, but if he shall not approve he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be reconsidered, and if approved by two-thirds of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it unless the legislature, by their adjournment, prevented its return, in which case it shall be a law unless sent back within three days after their next meeting.

Sec. 20. Every order, resolution or vote to which the concurrence of both houses may be necessary (except on a question of adjournment) shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, shall be re-passed by two thirds of both houses, according to the rules and limitations prescribed in case of a bill.

Sec. 21. Any bill may originate in either house of the legislature, except bills appropriating money, which shall originate only in the house of representatives, and all bills passed by one house may be amended by the other.

Saltlands Vested Forever in the State.

Sec. 22. The legislature shall never sell or dispose of the saline lands belonging to this state, but may authorize the purchase of contiguous lands thereto by authority of law, as may be necessary for the convenience and interest of the state.

Quorum for Each House.

Sec. 23. A majority of each house shall constitute a quorum to do business, (except in cases of impeachment.) Each house shall determine the rules of its own proceedings, and be the judges of the elections, returns and qualifications of its own members and shall choose its own officers.

Senate and House May Expel.

Sec. 24. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free state.

Journal and Manner of Voting.

Sec. 25. Each house shall keep a journal of its proceedings, and publish them, (except such parts as may require secrecy) and the yeas and nays of the members on any question shall, at the desire of any two of them be entered on the journal. All votes in either house shall be "viva voce."

The doors of each house, and committees of the whole, shall be open, unless when the business shall be such as ought to be kept secret Neither house shall, without the consent of the other, adjourn for more than three days.

Freedom of Debate.

Sec. 26. For any speech or debate in either house of the legislature the members shall not be questioned in any other place.

Sec. 27. The legislature shall provide by law that all stationery required for the use of the state, and all printing authorized and required by them, to be done for their use or for the state, shall be let by contract to the lowest bidder; but the legislature may establish a maximum price.

No member of the legislature or other state officer shall be interested, either directly or indirectly, in any such contract.

Sec. 28. The mode of organizing the house of representatives at the commencement of each regular session, shall be prescribed by law.

Sec. 29. Each bill and concurrent resolution, shall be read at large in three different days in each house, and the bill, and all amendments thereto, shall be printed before the vote is taken on the final passage.

The presiding officer of each house, shall sign, in the presence of the house over which he presides, while the same is in session, and capable of transacting business, all bills and concurrent resolutions passed by the legislature.

Indebtedness due the State.

Sec. 30. The legislature shall have no power to release or relinquish in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this state, or to any municipal corporation therein.

Sec. 31. Any person holding office under or by virtue of the laws of the state, who, except in payment of salary, fees, or perquisites, receives, directly or indirectly, anything whatever of value, or of personal advantage, or the promise thereof, for performing or omitting to perform any official act or, with the express or implied understanding that his official action or inaction is to be in some manner or degree influenced thereby, shall be deemed guilty of a felony, and on conviction shall be punished as the legislature may provide.

Sec. 32. Any person or persons offering a bribe, if the same shall be accepted, shall not be liable to civil or criminal prosecution therefor.

But any person who offers or promises such bribe, if the same shall be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony, and on conviction shall be punished as provided by this article.

Sec. 33. Any person charged with receiving a bribe, or with offering or promising a bribe that is rejected, shall be permitted to testify in his own behalf in any civil or criminal prosecution thereof.

Privileges of Senators and Members.

Sec. 34. Members of the legislature shall in all cases except treason, felony or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process during the session of the legislature nor for fifteen days next before the commencement, and after the termination of each session.

Divorce.

Sec. 35. The legislature shall not have power to enact laws annulling the contract of marriage in any case where by law the courts of the state are, or hereafter may be empowered to decree a divorce.

Vacancies.

Sec. 36. When vacancies occur in either house the president of the senate or speaker of the house in which the vacancy may occur, shall issue writs of election to fill such vacancies.

Revenue.

Sec. 37. All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments, as in other bills. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Vice and Immorality.

Sec. 38. The legislature shall provide by law for the suppression of vice and immorality in this state, and shall never authorize any games of chance, lottery or gift enterprise, under any pretense or for any purpose whatever.

Public Money and Appropriations.

Sec. 39. The legislature shall make no appropriations of money out of the treasury in any private law. Bills making appropriations for the pay of members and officers of the legislature, and for the salaries of the officers of the government, shall contain no provision on any other subject. The salary of any officer shall not be increased for any term for which he may have been appointed or elected.

Sec. 40. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall, within sixty days after adjournment of each session of the legislature, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

Sec. 41. Each legislature shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general and special, requiring money to be paid out of the state treasury from the funds belonging to the state, shall end with such fiscal quarter: Provided, that the state may, to meet casual deficits or failures in revenues, contract debts never to exceed in the aggregate $250 000; and monies thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt but for the purpose of repelling invasion, suppressing insurrection or defending the state in war, (for payment of which the faith of the state shall be pledged) shall be contracted unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for the members of the legislature at such election. The legislature shall provide for the publication of said law for three months at least, before the vote of the people shall be taken upon the same; and provision shall be made at the time for the payment of the interest annually as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid. And provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

Sec. 42. The legislature shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim or part thereof, hereafter created against the state, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void. Provided, the legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Sec. 43. The state shall never pay, assume or become responsible for the debts or liabilities of or in any manner give, loan or extend its credit to or in aid of any public or other corporation, association or individual.

Miscellaneous.

Sec. 44. The legislature shall provide by law that the fuel, stationery and printing paper furnished for the use of the state, the copying, printing, binding and distributing the laws and journals, and all other printing ordered by the legislature, shall be let by contract to the lowest responsible bidder; but the legislature shall fix a maximum price; and no member thereof, or other officer of the state, shall be interested, directly or indirectly, in such contract. But all such contracts shall be subject to the approval of the governor, and if he disapproves of the same there shall be a re-letting of the contract in such manner as shall be prescribed by law.

Sec. 45. The State of Nebraska shall never be made defendant in any court of law or equity.

Sec. 46. No law shall be passed which shall operate to extend the term of any public officer after his election or appointment.

Sec. 47. It shall be the duty of the legislature to pass such laws as may be necessary for the protection of operative miners, by providing for ventilation when the same may be required, and the construction of escapement shafts, or such other appliances as may secure safety in all coal mines, and to provide for the enforcement of said laws by such penalties and punishments as may be deemed proper.

Sec. 48. The legislature shall provide for the establishing and opening roads and cart ways connected with a public road for private and public use.

Sec. 49. The legislature may pass laws permitting the owners or occupants of lands to construct drains and ditches for agricultural and sanitary purposes across the lands of others.

Sec. 50. The legislature shall pass liberal homestead laws and exemption laws.

The secretary read the first section as follows:

Sec. 1. The legislative authority of the state shall be vested in the senate and house of representatives, both to be elected by the people. The senate shall not exceed thirty-three senators, nor the house of representatives more than one hundred members. The representatives shall be chosen annually, by the citizens of each county respectively, on the Tuesday succeeding the first Monday in November.

Senators shall be elected for the term of three years, and representatives for the term of one year from the day next after their general election.

Mr. HASCALL. Mr. Chairman. I move to strike out the word "county" in the 5th line and insert "representative district."

The committee divided and the amendment was not agreed to.

Mr. MASON. Mr. Chairman. It is well for us to consider the language we put in our constitution. Certainly representation should bear some relation to population. Let me say that I, for one, would be in favor of giving western counties a larger representation than their present population would entitle them to, in view of their rapid increase in the number of their inhabitants. But I am not in favor of giving representation to every county. I might illustrate the result by citing a case in Iowa, where every strip of land of a certain size made a school district. In one there was but one man lived, and he elected himself school director; voted for a school house, worth $3,000; carried the election;

got his money; built the house and had his wife appointed teacher, using part of the school house for a residence. (laughter). Are counties to furnish the basis for districts here? Take my own county, for instance. We have a town in it, which if it sees fit, can take to itself the entire representation of the county. Now shall we say that the constitution shall give a representation to each county? Soon there will be a large town in the county, which will control the whole county. Then the counties will say "we prefer to have the county set off in districts." If I am correctly informed, there are some counties in this state, in which there is not a man. I hope this amendment offered by the gentleman from Douglas (Mr. Hascall) may not be so summarily dealt with. It is worth while to pause before you vote it down. If the gentlemen desire to say that every county of a certain population, shall have a certain representation, that will do. Now while I don't live in the immediate confines of that city which controls our county, I am not one of those who say that all the learning, all the ability, all the talent concentrates in the large towns. Therefore I ask the gentlemen to pause and consider, before the amendment offered by the gentleman from Douglas (Mr. Hascall) is thus summarily dealt with. I hope the amendment will prevail. If the legislature shall see fit to district up counties, they will so order, if they see fit to district in some other way, they will so order.

Mr. GRIGGS. Mr. Chairman. I am in favor of this amendment. I can say that although I represent Gage county in this convention, I also represent other counties that are sparsely settled I cannot vote nor will I vote to have all the power of carrying the elections left with the large towns. Suppose in our county we have three representatives. Beatrice would get all three, and the other parts of the county would get nothing. I don't believe that because there are 150 men living in the town that they shall have the three representatives and the 100 men who live in the country shall have nothing. I am in favor of representative districts, leaving it in the hands of the legislature to say what those districts shall be.

I don't believe that there is any gentleman on this floor believes that this is fair or just. I hope that the amendment will prevail, I believe that when it prevails that justice thereby prevails and we will avoid these swindlers and cheats. Suppose that if we have a representative district composed of two counties, one populous and the other weak. We all know that this will leave the sparsely populated county whose votes amount to almost nothing—without a representative. I hope the friends of the welfare of the unpopulated part of of our country, will vote for this amendment.

Mr. MYERS. Mr. Chairman. I do not concur in the objections that have been made to this section. We must have a starting point, and we cannot recognize precincts, city, town or parts of towns. We must have the section state how the legislature may have the representatives chosen by the people. It certainly must be done by counties first, by apportioning the number of legislators to each county. In a subsequent portion of this Article it is provided that the several members of the legislature shall be apportioned by that body according to the number of inhabitants of each district. That is in harmony with the declaration in the 1st section. I don't know as to the propriety of forming the single representative district of our state. It is true that the county of Douglas has a large city with in it, which is also the case with Otoe county, and that they absorb all but one of the members from those counties. Douglas county has eight members. Now would you divide that city into eight parts and the county into as many? If you do that part of the city would still control the portion outside of the city. I think it is better to get one member from the rural districts. Why not have the voice of the people of the whole county centered upon the number of delegates that they are entitled to have. Let the whole people of the county vote for the whole number of their representatives. It is not too big a cherry for the inhabitants of any town to swallow. I therefore hope, unless this convention should agree to have little representative districts, that this section may be adopted as reported by the committee.

Mr. WEAVER. Mr. Chairman. I cannot see the force of the objections that are expressed against the adoption of this section. I think the two fears of the gentleman from Otoe (Mr. Mason) are not consistent,. He first fears that the county would get all and in the next place he fears the city would get all the representation. I can see no reason why this amendment should prevail.

Mr. MASON. Mr. Chairman. I failed to make myself understood. I would strike out the word citizens in the fourth line and insert the words "electors of the state." I am not one of those who believe in exclusive representative districts, I would have some elected from the whole state at large; and why? It is a principle of our nature that we look first to the interests of those who are nearest to us, our families, town, city or county which we represent. When we reach that matter I shall favor the election of a limited number of representatives from the whole state. Let no gentleman misunderstand me and think that I advocate single representative districts, or that I advocate a representative from a county whether it has a population or not. This section will meet my views if we strike out the words "of each citizen" in 4th line and "county respectively" in fifth line, and insert the words "electors of the state." I have looked over the bill and see in every step such barriers in the way of carrying out the views here foreshadowed that it is impossible for me to amend it so as to meet these views if they should receive the approbation of the committee of the whole, and sooner or later we must reach a point where I trust it may be committed to the smaller committee from whence it came to make certain corrections. Now sir, why should you elect your senators for three years instead of two? I believe that the law making power should come first from the fountain of all power, fresh from the people, and your senators should be elected for two years and your representatives for one year if you are to have annual sessions of the legislature. There are other objections which in the present state of this bill I do not care to urge. I object to that word "citizen" there. The new born babe is a citizen; the maniac is a citizen; the criminal in the penitentiary is a citizen; all are citizens, yes sir, and woman is a citizen, and when we are making constitutions let us use language that has a specific meaning. It is not every citizen that is an elector, or ought to be an elector; the word "citizen" should be stricken out and the word "elector" substituted in its stead. You have defined what makes an elector in one other provision that has been under consideration, hence I would not say that the new born babe, resting on the mother's bosom should help elect these representatives, I would not say that the maniacs in the insane asylum should elect these representatives, and for this reason I would strike out the word "citizen" and say "electors," and I would say electors of the state, so as to fix it that the election should be held on the same day in all the counties. It seems to me this obviates this difficulty.

Mr. MYERS. Mr. Chairman. The gentleman from Otoe (Mr. Mason) is right in his definition of who are citizens, that they are all the people of the state. I agree to that, but this bill provides for the recognition of that portion of its citizenship who shall control its government, who shall be its electors, it does not ostracize any portion of them, it does not introduce an hypercritical difficulty among any class of our fellow citizens but we are recognizing here as the old Roman did, every man a citizen, entitled to the protection of the state, whether he be rich or poor, sane or insane, but out of the body of all the citizens we define by constitutional law which portion of them should control the government. We have heretofore decided which class they shall be. We did not take the negroes in for a long time, although they were citizens, we do not take in felons, convicts or lunatics, but we have taken in four or five millions which were disfranchised since the organization of government. The Romans did not allow their negroes to vote but they were taken and embodied in the Roman Republic, they were citizens to all intents and purposes. The British government enfranchises nine-tenths of its subjects, they are all called subjects there, here we have no nobility, no such distinctions and hence this bill is perfectly logical and correct in selecting from the mass of the people those who shall be vested with the right of being its electors. The gentleman says we have a right to say who shall vote here, rather we have the right to say no man shall vote unless he is a naturalized citizen, that will keep out the Chinese. Mr. Chairman, I have a word to say in regard to the senators whom this committee have provided to be elected for a term of three years. I am in favor of going as close as you can to the minds of the people. Let me say the senate is a different body to the house of representatives, it is a conservative body, and here is the distinction made in the organization of the Federal Government, their senators are elected, not directly by the people at the ballot boxes, but by the state legislature for a period of six years. I want the gentleman from Otoe to take notice of the fact that the senate of the United States is a conservative body. Should the senate be subject to the caprice of the leaders of the community the same as the house of representatives, elected here each one from his little county to carry out a particular object? We want the senate there as a restraint upon the house of representatives.

Mr. WEAVER. Mr. Chairman. I rise to a point of order. There is no motion touching this question the gentleman is discussing.

Mr. MASON. The gentleman is in order, the whole article is before the committee.

The CHAIRMAN. The gentleman is in order.

Mr. MYERS. I am a conservative man, and have the great credit of coming from a conservative state, and I desire that those principles which have been established by our revolutionary fathers should be loved and cherished by their children. I believe I do not address a single individual in this convention who has the honor of having been born upon the soil of Nebraska. Let us listen to the voice of wisdom from the old states when they laid the superstructure of their state governments down deep, strong and broad in the bosom of their hearts. Let us make no hasty departures from those grand principles which they have so established. I have provided by the consent of this committee, a senate which shall be elected for three years, one portion of it to go out every year, by which we will have a fresh infusion from the people sufficient to keep the body in order. I do not propose to establish gentlemen in a position where they shall be deaf to the voice of the people, where the people shall have no means of approaching them. I at least want that spirit of stability established that will give the people a sense of security in the pursuit of their business, the establishment of their corporations, and in the embodiment of their laws, hence I want the senate to sit there free from the restraints and restrictions of their first election. They are there for the second time, their minds clear and unembarrassed, where they can act impartially and justly. The senators are separate from the house of representatives, having a restraint upon that body. Owing to inexperience men come here passing laws that are the cause of confusion in the enforcement of laws by the courts, they are passed by gentlemen inexperienced in deliberative bodies.

Now get your men of experience into the senate, let them first draw their lesson of wisdom in the house of representatives, and after their wisdom has been drawn here, and they have been found honest, send them to the senate with their increased wisdom, and then you will have faith in your senatorial body, and then gentlemen will not rise as they have in this body, and denounce a former legislature over which they had no control. If you make them all members of the house of representatives, elect your senators for the same term that you do for the house. Why your senator is all bosh; it means nothing, and is a contradiction of language. I hope this convention then in its wisdom will see the propriety of making a difference in these two points.

Mr. HASCALL. As I made this motion I will give my views of this section. By looking at the fourth section you will discover it reads in this way—"the senators should be chosen from the several senatorial districts". Now, I propose to make the reading in reference to the representatives read in the same way—"that the representatives should be chosen from the several representative districts." Now, I am not opposed to putting the word "elector" in the place of "citizen." But that is not the question. Now with regard to these representatives, we will put in the constitution, undoubtedly a section defining the several senatorial and representative districts in the state, and will also apportion senators and representatives to those districts. The idea that the gentleman had, and also the committee, in framing this article was that the representatives should be chosen from the counties and that the senators should be chosen from districts. The reading of the whole article would seem to convey that idea, and the argument of the gentleman with regard to keeping counties together for the purpose of electing representatives would seem to confirm me in the idea I have conveyed as to what they intended. Now, I am in favor, so far as practicable, of bringing the representation clause to the people as far as my voice goes in this convention, I shall advocate that no more than one senator shall be elected from one district. and if more than one is to be appointed from one county I shall advocate cutting up that county into several districts. If there is a single county in the state entitled to three or less representatives, and they desire to have that in one representative district, in forming these representative districts we can say, perhaps, that a certain district shall have one or two representatives.

When my colleague says there is no way of arriving at the number of citizens of Douglas county outside the city, I can very readily arrive at it. I can give the population of the city of Omaha, which is about 16,000, and there are about 4,000 outside. And I can say to the gentleman that they have a population under our present constitution, and considering the present number we are entitled to in the house of representatives that would entitle Douglas county, outside of Omaha, to more than one representative. The gentleman could have the representatives from the country, and also have a voice in the float. I think it would be improper to say these should be elected by the citizens of the state. I do not see why we should not use the same language in regard to the representatives as to the senators. That obviates all difficulty. With regard to representation at large I am satisfied this convention will not conclude to allow senators to be elected by the state at large. Because you make the state at large a district. And, then you can make a county a district—one-half or two-thirds of a county a district. This thing can be arrived at in a satisfactory manner. We have our counties cut up into precincts, and it is easy to say this senatorial district shall consist of precincts, or you can say it shall consist of wards, and our wards in cities are called precincts in the counties. Consequently, I think it is well enough to start out at this time, and say the representatives shall be chosen annually by the electors of the several representative districts on the Tuesday succeeding the first Monday. And when we reach those other questions that have arisen it is a matter we can soon determine by the vote of this committee.

Now, with regard to the senators I am not in favor of the proposition of the gentleman from Otoe or my colleague. I shall sustain a proposition to elect senators for two years, and let one half go out every year. I think that is the most sensible plan.

Mr. ROBINSON. I move that this committee now rise and report this article back to the convention with the recommendation that it be recommitted to the legislative committee, with instructions to prepare an article as nearly conformed to the constitution of the state of Illinois as our circumstances will allow.

Mr. LAKE. I do not know whether we want the article of Illinois or not. It seems to me a strange procedure. Let him see what it is. If any plan is to be adopted that will conform to the plan we have been living under for a number of years, which has worked very well. Now, most certainly, the constitution we have been living under for the past four years, so far as our legislature is concerned, would be far more suitable to our wants and tastes than that of Illinois. And it seems to me that if there is any serious difficulty or embarrassments in the way of modifying this which has come from the committee to whom this subject has been entrusted, that we have not yet met with any serious impediment. Now, I would like to hear from gentlemen who propose this mode of disposing of the committee. Why not conform to any other model that would be just and proper and right? Why not resort to the constitutions of the several states for the purpose of getting up some plan for an article of this kind? And why confine the committee to the state of Illinois? Is this committee prepared to say that the constitution of the state of Illinois, in this regard, is just the thing we need, or that light cannot be drawn from the experience of some other state? Why force this matter upon this convention in this shape at this time? We have had under consideration but one section of this Article. Now in respect to the difficulty that we have met right here at the threshold, this is not a serious one, and there can be no serious objection to taking the language proposed in the report, or the language of the amendment offered by my colleague (Mr. Hascall). I don't think the language in which the gentleman from Otoe (Mr. Mason) proposes to clothe this thing, is appropriate. I think the language in our old constitution is better. We know that in this matter the people of the state are satisfied with that, we have not heard one complaint with respect to this branch of our old constitution. It leaves it with the legislature and if the legislature, under the old constitution, should see fit to make single districts in each county, they would have authority to do so; and they would be authorized to do so under the provision of my colleague, (Mr. Hascall) or the gentleman from Otoe, (Mr. Mason) or under the section as reported by the committee. Leave the legislature to determine what these districts should be. If the legislature should see fit to say that counties should be the largest, or smallest of these districts, it would have the authority so to do. I am in favor of leaving it just as it was left in our old constitution. I am opposed to re-committing this to the committee from which it came with instructions to make it conform to the Illinois constitution. In that constitution, there are many things inapplicable to our wants. It seems to me it is tying the hands of the committee. For what reason is this motion made? Is it for the purpose of insulting the committee? This section can be amended here; why return it to the committee? If the gentleman can give any good reason why it should be re-committed now, upon this cursory view of the Article, before we have fully considered one section, I would like to know what those reasons are. I would like the gentleman to give reasons why they would resort to the Illinois constitution. We have a great many constitutions, that can be resorted to; we have constitutions which have borne the test of experience of time, that can be resorted to. What is this Illinois constitution? Have we had experience in it? Has Illinois had experience in it? If we are to take any constitution for a model, I would say, take the constitution under which we have lived up to the present time. Why throw overboard that which has been to us, in this respect, a good pilot, and seek that "which we know not of?" It seems to me that we should gather some information from the experience of the past, and if the experience of the past shows us that representative districts such as we have had, are good, let us conform, as nearly as practical to that. Let us not go and take up that system, the workings of which we know nothing of. I am not willing to return this Article without first considering it. For these reasons, Mr. Chairman, I am opposed to the proposition.

Mr. TOWLE. Mr. Chairman. I would ask the gentleman from Douglas (Mr. Lake) whether if the resolution was so amended as to strike out that portion which relates to the constitution of Illinois, he would support it?

Mr. LAKE. I would ask the gentleman from Richardson (Mr. Towle) why this tirade—why this haste. We have merely, thus far, read the first section, and there seems to be a conflict of opinion as to changing a word or two in this section. There does not seem to be any great difficulty there. I am in favor of giving the report of any committee a fair consideration. The committee which has been selected for this business, have had this matter under consideration and have given a good report. Until we have found some difficulty that it is impossible to overcome, we should consider their report in the same manner we have considered the reports of other committees.

Mr. TOWLE. Mr. Chairman. In looking into the report and after talking with other members of this convention, I have found that it is glittering all over with imperfections. We find objections piled, one upon another. It must be re-committed back, or it will take us days, weeks and months to trim it into proper shape. I believe, sir, that this proposition is not a fair expression of this committee. I believe this committee has allowed an overshadowing influence to control its actions in this respect. I think if they are allowed to, they will give us a report which will be satisfactory. The gentleman has alluded to the constitution of the state of Nebraska. I would take the corresponding article in it, and place it in place of the report of this committee. I would take the legislative Article in the constitution of Kansas, in preference to this report. Now my conviction upon this report as it stands here today is that if we go on considering it, it will be many days before we adopt it. I will make an amendment to the resolution of the gentleman from Lancaster (Mr. Robinson) which is that that portion relating to the constitution of Illinois be stricken out.

Mr. ROBINSON. I accept the amendment, Mr. Chairman. I rise to answer the gentleman from Douglas. I made that motion because I wanted to and had a right to, and because I think it is a poorly digested article. We find an objection right at the beginning and I don't believe we will agree in the three questions raised. In making that motion I meant to throw no insult upon the gentlemen reporting that article.

Mr. MYERS. Mr. Chairman. I am not at all tenacious about having this report adopted as reported. I don't propose to thrust it down the throats of this convention. I know that other reports come into this convention just as erroneous and defective as this report which required amendments to make them perfect, and I don't suppose that an article like this could escape objections. If there is an absolute necessity of recommitting this bill, why let it be recommitted. I shall not take it as an affront, but I think the particular section under consideration can be amended as others have been.

Mr. GRAY. Mr. Chairman. I hope the motion will not prevail. I presume every member of this house has been at work preparing amendments for the different sections of this report and is ready now to enter upon the consideration of it, and sir, why the re-commitment? A number of days will pass before it is again reported and then it will require some time to examine it before we are ready for action upon it. No sir, as has already been said there are only a few questions on which differences of opinion will exist, and they will still exist and be discussed if the bill is re-committed, until they are passed upon by this committee. I defy that committee or any other committee to make a report that will suit every one here on the questions raised under the consideration of this bill.

There is too wide a difference of opinion upon the subjects. For my own part I desire to see every county of this state have a representative in one branch of the legislature. It may be to say every county is going too far. I desire to see a limit fixed, but as a general rule I would prefer to see such a provision made. Other gentlemen here will prefer our present system of representation including the "floats" and all, but we will have to decide the matter for ourselves and no report of any committee can decide them. I am opposed to this going back at all to any committee.

Mr. WAKELEY. Mr. Chairman. I desire that some action may be taken that shall expedite the consideration of this article. It seems to me if we re-commit it to this committee before any expression of the minds of the convention as to all main features of the article is had, the committee will have no guide as to the desire of the convention. If they have no guide in that matter, what have we gained. It seems to me there are a great many practical objections to re-commit this article at this time. I think we should proceed with the article now before us as well as we can, and go on with it until we have settled the main features of the legislative article, we should decide what shall be the limit to the number of senators and representatives, what shall be their term, whether we shall have an annual or biennial sessions, what we will propose as to senatorial and representative districts, what is to be the compensation and I might enumerate a great many other particulars. I think we ought to arrive at conclusions before the article is re-committed. When we have done this, if we think the arrangement of the article might be bettered, that portions of it may be dispensed with, the committee will have some guide. In regard to this amendment Mr. Chairman, my opinion is there is no necessity in this first section of saying anything about this. Suppose we were to strike out "by the citizens of each county respectively," would not that obviate all the difficulties we have encountered thus far? At some appropriate place in this article we ought to make provision as to the districts, there is no necessity of providing for it in this section, say simply representatives shall be chosen annually, that is enough. The suffrage article fixes the qualification of an elector. They cannot be chosen by anybody but electors. I see no necessity for it. Simply say how often they shall be chosen and on what day. Certainly you have not got to stop whenever you speak of a senator or representative to say it must be by qualified electors. It seems to me we can go along and take these provisions as they come and express our views upon them in this committee, until we have at least blocked out the main features of the legislative article as we desire to make it.

Mr. MOORE. Mr. Chairman. As a member of that committee I shall like to see the report re-committed. I think it will do no harm whatever for us to look over it again. Through certain circumstances I did not get to meet with the committee but once and that was but a very short time, the next thing I heard was that it was passed upon and ready to be presented to the convention. I asked the privilege of reading the manuscript, but could not, so that I never saw it until it was read in the convention. Several members of the committee are anxious for re-commitment. We do not mean to cast any reflections on the chairman of the committee at all, we wish to have another chance of getting at something that will satisfy this convention.

The CHAIRMAN. The question is that the committee rise and report the article back to the committee.

The motion was not agreed to.

Mr. GRAY. Mr. Chairman. I move that the committee now rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. SCOFIELD. Mr. President. The Committee of the Whole have had under consideration the article reported by the legislative committee, and have instructed me to report progress and ask leave to sit again.

The report of the committee was accepted.

Adjournment.

Mr. WAKELEY. Mr. President. I move that when we adjourn we adjourn to meet at eight o'clock this evening.

Mr. GRIGGS. Mr. President. I move we adjourn to meet at nine o'clock to morrow morning.

The convention divided and the motion was agreed to, so the convention at five o'clock and fifty-five minutes adjourned.

TWENTY-FIFTH DAY.

Friday, July 21, 1871.

The convention met at ten o'clock and was called to order by the president.

Prayer.

Prayer was offered by the Chaplain, as follows:

Our Father, may it please Thee to take care of us this day. Bless all our doings. Grant that we may have Thy favor in the glory of righteousness. Give light to all the land that there may never again be battle unto blood. Continue the Nation's life and may prosperity, through intelligence and virtue extend to our brotherhood. May freedom reign throughout all our borders. Amen.

Reading of the Journal.

The Journal of the last day's proceedings was read and approved.

Privilege.

Mr. MASON. Mr. President. I desire now to ask the consent of the convention to record my vote on Section 13 of the Bill of Rights, against the amendment for the insertion of the word "general," as I was out when the vote was taken. (Leave, Leave.)

Reports of Committees.

Mr. BOYD. Mr. President. Your committee on Railroad Corporations beg leave to report that they have had under consideration the various resolutions referred to them and would respectfully submit the following report. I move that it be read twice by its title, ordered printed and referred to the Committee of the Whole House.

The report is as follows:

ARTICLE.

Railroad Corporations.

Sec. 1. Every railroad corporation organized or doing business in this state under the laws or authority thereof, or by the authority of the general government shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed and by whom, the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

The directors of every railroad corporation shall annually make a reports, under oath, to the auditor of public accounts, or some officer to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law And the legislature shall pass laws enforcing, by suitable penalties, the provisions of this section.

Sec. 2. The rolling stock and all other movable property belonging to any railroad company or corporation in this state, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals. And the legislature shall pass no law exempting any such property from execution and sale.

Sec. 3. No railroad corporation shall consolidate its stock, property and franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except, upon public notice given of at least sixty days to all stockholders, in such manner as may be prescribed by law. A majority of the directors of any railroad corporation now incorporated, or hereafter to be incorporated by the laws of this state, shall be citizens and residents of this state.

Sec. 4. Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the legislature shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this state.

The liability of railroad corporations as common carriers shall never be limited, but the same shall be and remain as fixed by the common law.

Sec. 5. No railroad corporation shall issue any stock or bonds except for money, labor or property actually received and applied to the purposes for which said corporation was created; and all stock, dividends and other fictitious increase of the capital stock or indebtedness of any such corporation, shall be void. The capital stock of no railroad corporation shall be increased for any purpose except upon giving sixty days public notice in such manner as may be provided by law.

Sec. 6. The exercise of the power of right of eminent domain shall never be so construed or abridged as to prevent the taking by the legislature of the property and franchises of incorporated companies already organized, or hereafter to be organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation when in the exercise of said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

Sec. 7. The legislature shall pass

laws to correct abuses and prevent unjust discriminations and extortion in the rates of freight and passenger tariffs of the different railroads in this state, and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

Sec. 8. All lands in this state heretofore granted or that may hereafter be granted by the United States to any railroad corporation and to which any railroad coroporation is now or hereafter may become entitled by the building thereof, shall be subject to taxation from the time the same are designated and set apart or surveyed and set off by the United States for said corporation.

Sec. 9. No county, city, town, township or other municipal corporation shall ever make any donation to, or loan its credit in aid of, any corporation that has received or may hereafter receive a grant of land from the United States, or to any railroad corporation which has or shall hereafter construct its road in whole or in part from the proceeds of land grants made or hereafter to be made to any corporation or company by the United States.

Mr. KIRKPATRICK. Mr. President. Your committee on State, County, and Municipal Indebtedness beg leave to report as follows: I ask leave to read the report, as it is short. (Leave).

ARTICLE—

Sec. 1. No city, town, county, precinct, or other municipality or other subdivision of the state shall ever become a subscriber to the capital stock of any railroad or private corporation, or make donation thereto, or aid in the construction of any railroad or work of internal improvement or create or contract any indebtedness for any purpose herein specified, unless a proposition so to do shall have been submitted at an election held by authority of law and three-fifths of the qualified electors voting on said proposition shall be in favor of the same.

Such indebtedness, inclusive of any and all similar indebtedness whensoever created, shall not at any time exceed ten per cent. of the valuation for taxable purposes of such city, county, town, precinct or other municipality or sub-division of the State contracting such indebtedness.

Sec. 2. Nor shall any aid be given to any railroad company or for the construction of any railroad, or any indebtedness be created or contracted for such purposes, unless the line of the railroad shall have been definitely located, and shall be specified in the proposition voted upon.

Your committee desires to make another report on the same subject. I will state that this is a minority report:

ARTICLE ——

Section 1. No county, city, town, precinct or other municipality shall ever become subscribers to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation; PROVIDED, That the adoption or rejection of this article shall not affect in any manner the question of the legality or illegality of any donations already made to any railroad company or other private corporation.

I ask that they be read twice by the title, ordered printed and referred to the Committee of the Whole.

The reports were read the first and second time by their title and referred to the Committee of the Whole.

Mr. CAMPBELL. Mr. President. Your committee on Printing and Binding submit the following report:

The Secretary read the report as follows.

ARTICLE ——

Section 1. The printing and binding of the laws, journals, bills, legislative documents and papers for each branch of the Legislature, with the printing required for the Executive and other departments of State, shall be let on contract to the lowest responsible bidder by the State Executive officers, and in such manner as shall be prescribed by law; PROVIDED, The printing and binding shall be done in the State.

Mr. CAMPBELL. Mr. President, I move the report take the usual course.

The report was read the second time by its title and referred to the Committee of the Whole.

Mr. SCOFIELD. Mr. President. The Special Committee, to whom was referred the report of the Standing Committee on State Institutions and Public Buildings, together with the several amendments proposed thereto, respectfully report that it has had the subject under consideration and submit the following and ask that it be embodied in the Constitution.

The Secretary read the report as follows:

Section. —. The Superintendent of Public Instruction and the Land Commissioner shall be elected at the first general election provided for in this Constitution and at the general election every two years thereafter; and these officers, together with the Secretary of State, the Treasurer and the Attorney General shall have the supervision and control of all the public buildings, institutions, grounds and lands of the State, subject to such rules and regulations as may be prescribed by law, and your Committee recommend that the same be made a part of the article on Executive.

Mr. MASON. Mr. President. I move that report be referred to the Committee of the Whole House.

The motion was agreed to.

Resolutions.

Mr. WAKELEY. Mr. President. I move the adoption of this resolution:

"RESOLVED. That the report of the Committee on Electoral and Representative Reform be made the special order and considered on Tuesday evening of next week at 8 o'clock, and each evening thereafter at the same hour nutil otherwise ordered.

The resolution was adopted.

Mr. STEWART. Mr. President. I offer a resolution.

The Secretary read the resolution as follows:

'RESOLVED. That no member of the Convention shall, while in Committee of the Whole, speak more than twice upon the same subject, and then not more than ten minutes at any one time."

Mr. HASCALL. Mr. President. I move to amend by inserting fifteen minutes instead of ten.

Mr. STEWART. I accept the amendment and move that rule forty-three be suspended so that the resolution can pass.

Mr. MYERS. Mr. President. I am certainly in favor of restricting the time alloted to each gentleman in the discussion in Committee of the Whole. I believe it is expedient to abridge the time. I shall vote for the proposition with this restriction, that the chairman of committees be allowed the same length of time but to take the floor oftener in explanation of their several propositions. I am unfortunately in charge of a bill which is open to much criticism, as it contains a large number of provisions which are susceptible of amendments, and I would like the opportunity to explain my own views and the views of the committee without limit as to the number of times. I therefore move to add, "except the chairman of the committee who shall be privileged to speak more than twice."

Mr. GRAY. Mr. President. I desire to offer a substitute for the resolution. "That no member be allowed to speak more than once, and only fifteen minutes on a question either in Convention or Committee of the Whole."

Mr. PHILPOTT. Mr. President. I am opposed to the substitute and the suspension of the rule, in order that parties may be enabled to pass either amendment or substitute. I believe we ought to have a fair opportunity to express our opinions. I believe no gentleman in the Convention will intentionally consume, in a needless manner, the time of the Convention. Now it is a parliamentary rule that in Committee of the Whole persons shall not be limited to time or a number of times. Who have been consuming the time here? Everyone must admit that the gentlemen who have consumed the most time are persons acknowledged throughout the State to be men of the greatest ability, and I know I have been greatly benefitted by all they have said. In some cases my opinions have entirely changed from the sound reasoning of those gentlemen. If any gentleman does not want to remain here let him resign, and his constituents send somebody who can devote the time. I speak not for myself but for men of ability who ought to lead.

Mr. MOORE. Mr. President. If I remember correctly, we are assembled around the desk and took upon ourselves a solemn oath to perform our duties as constitution makers In that oath is embraced this, that we apply ourselves to the gaining of such information as shall enable us to form the best constitution we are able to. We have two ways to gain information, one from books in our library, the other from men of experience. I can gain a deal of information from the speeches made here, there is but very little repetition from gentlemen who speak here, they are men of experience, and we ought to give them time to express their views.

Call of the House.

Mr. PHILPOTT. Mr. President. I move a call of the House.

The Secretary called the roll.

Absent on leave, Messrs. Grenell, Parker, and Tisdel.

Resolutions Again.

Mr. MASON. Mr. President. I rise to speak of a question which must necessarily come before this Convention. For instance, the question of minority representation to which some gentlemen have addressed themselves; and it is a question upon which I must express myself comparatively lengthy. And there are other questions to which I desire to listen. It may be true that the gentleman from Dodge (Mr. Gray) and others, owing to activity of their brain, can comprehend a question in fifteen minutes. I sit here sometimes, and am in doubt at the end of an hour as to what my duty is. I am opposed to this resolution at this time. If in the future, it should become absolutely necessary to do it I shall be in favor of it. We are not here to make a law which may be repealed next winter, or modified, or changed when it shall be found to work bad in practice. Hence it becomes necessary to weigh carefully all words used and the general character of the proposition, before it is embodied in the constitution. I believe there is a time when great haste is great waste, and I also believe there is a time when great caution and slow speed is progress itself.

Mr. STEWART. It is a little peculiar to me that those gentlemen upon this floor, who make long speeches, are the poorest informed in relation to the articles in the constitution. If I remember right those gentlemen who oppose this resolution are the ones who are most up, and then fail to understand the question. I, for one, do not propose to sit here and listen to speeches of this kind. I admit there are some gentlemen I can listen to for an hour; but there are others who make undigested speeches of an hour's length, and when they get through we cannot tell what they have said. I am opposed to this wasting two or three hundred dollars of the peoples money per day in listening to long speeches. There is not a gentleman in this house who could not make all the remarks he wants to in thirty minutes. The people of this state are tired of it and already beginning to complain. I feel sometimes it might be my duty to express myself; but I do believe some men speak for the sake of hearing themselves speak, and for my part I am not going to sit here and be tortured with their speeches.

Mr. GRAY. Mr. President. It is with no disposition on my part to abridge discussion that I favor this resolution. But, as I have said heretofore, gentlemen can express themselves intelligibly upon any question that is likely to arise before this body in 15 minutes. It seems to me some gentlemen entertain strange views upon this subject. I desire to hear all pertinent discussion on the questions before this house, but I do not desire the time to be spent in the delivery of buncombe speeches. It is not consistent with my notions of duty to spend the time of this convention with tragical displays and such expressions as "The Pale Horse and His Rider." and others pertinent to Knight Errantry. When I desire to see a play I will go to the Academy of Music in Omaha and pay my money for the entertainment, but here I desire to discuss the practical questions of the day, which interest the people of the state, and not to listen to idle declamations. I trust every gentleman who is disposed to crowd on the action of this convention to a conclusion will support the amendment.

Mr. KIRKPATRICK. I am opposed, on general principles, to gag rules, and this is a highly restrictive rule which applies to limiting discussion in committee of the whole to fifteen minutes. It is in committee of the whole we do our work; where we complete the article proposed to be placed in the constitution; and we must have time to mutually confer together. Now, I think there are some gentlemen in this convention more able to give advice than others. It is so in all deliberative bodies. For my part, I desire to do my duty honestly. There are some men who seem to intuitively grasp certain propositions. I heard one gentleman here say his mind was already made up on certain questions. Why, that is not right. I hope there is not another gentleman who will say so. The rule, if carried, would not be enforced, for you will not wish to choke a man down. We have a rule which prohibits smoking. Now that is a democratic habit. I have seen half a dozen men smoking here, but I am not in favor of stopping them.

Mr. STEVENSON. Gentlemen, we have spent over thirty dollars of the state's money in the argument of this question, and for the love of God, let's us come to the question.

Mr. MASON. In an experience of some years, I have never known it to fail that those who make the most frequent reference to the interests of the people, are loudest in their professions of devotion to their interests, are always talking of the propriety of saving the people's money, are least devoted to their interests, and their professions are but the stepping stones to the throne of a first-class demagogue.

Mr. BALLARD. I rise to offer an amendment—

Mr. GRAY. With permission, I desire to withdraw the substitute.

Mr. BALLARD. I was going to remark that it might happen to me, at a very unexpected moment, that I should desire to make a very great speech on very small things; and in order to do that I might want more than fifteen minutes, and I move to add the words "unless permission be granted."

Mr. CAMPBELL. Mr. Chairman. I think it is very desirable that every member here should have the privilege of handing down his name and the record of his actions to the unborn babes of future generations. I also think that every omnium gatherum, and every omnium scatterum should have the privilege of handing down his name to posterity (Laughter) and of course they should be allowed to talk as often, and as long as they wish.

Mr. ESTABROOK. Mr. Chairman. This sir, is not a new thing to me. Perhaps, in the ways of Providence, I am the only one in this body who has been in a like body before. In this, the same subject was handled in the very same way, and three individuals in that very able body declared that they did not want their names handed down to posterity, so that you will find, in the debates and proceedings of that body, which I have at my desk that when Judge Whiton argued a question it simply reads "Mr. Whiton spoke." Now I ask any lawyer, or any man capable of being a juror —I ask the gentleman from Dodge (Mr. Gray) if he ever argued upon the question as to what shall be the exact signification of any particular passage in the constitution, if these published debates upon those points are not of the greatest service to him in coming to a decision as to the exact meaning intended? Now I undertake to say that the debates of this body are of the utmost importance and value to the inhabitants of this state. Now, speakers may abuse these privileges of debate; there are such things as talking for "buncombe"—of talking against time. There are men who have a very high appreciation of their abilities, and who love to hear the sweet sound of their own voices. But, sir, we have men in this body who are not of that character—men of ability and talent. It has been well said here that most of those who have spoken upon important questions have thrown light upon those matters. Let no man undertake to say that he was not enlightened by the able speech of Judge Mason a few days since. Why, sir, he swayed and carried with him almost every man in the house. In that speech there was not one word or syllable more than was necessary. I demand that this gag shall not be placed in the mouths of the members here. I ask this not only in the name of my constituents, but in the name of the people of Nebraska, who are to be governed by this constitution. Tell me where you are to go to nulock the mysteries of this constitution? Why, I have found in my local practice, that I often want to know what a particular provision means. In the debates on the Wisconsin constitution, when I wish to find what three or four of the ablest members of that convention had to say with regard to a certain important point, I find that Mr. Whiton spoke and Mr. Judd spoke or Mr. Beal spoke, but I find no record of what they said. If you cut off debate here, I know you will always regret it. It is an impeachment of the capacities and motives of every member here, when you say he don't know how long to talk. Otoe county sent our friend Mason here, because he is a talker—one of the ablest talkers in the state. Shall you deprive his constituency of his ability in that direction? The only two things perhaps which will cause much debate is the question of minority representation and the right of counties and municipalities to issue bonds. Here are men who have made this a study, do you think they can establish these principles in fifteen minutes? Do you think the people sent Judge Wakeley (who has made a study of the principles of minority representation) here to allow of his being gagged upon these questions after he has spoken fifteen minutes? If any man here, has business at home which requires his attention, I would advise him to ask leave of absence until the end of the session, and I am sure it will be granted him, gladly. Why do you pay thirty dollars per day to those reporters, if you do not want debates upon these important questions. If we are here for the purpose of gaining that information which comes from the attrition of mind with mind, let us derive some benefit from it.

Mr. PHILPOTT. Mr. Chairman. I have but a few words to say. I wish to call the attention of the gentlemen to three points. When we are in committee of the whole, any member can cut off debate by moving to rise and report progress. When we are sitting in convention, debate can be cut off by moving the previous question. This has been called but once in this convention, and then fifteen gentlemen rose. I am opposed to the proposition. I came here to do my duty by my constituents, and you never will, so help me God, tie my tongue here. I will be bound by the ordinary rules which rule bodies of this kind, but not otherwise. I am sure to be heard, and I will be heard.

The CHAIRMAN. The question is upon the motion to suspend the rules, in order to pass this resolution.

Mr. PHILPOTT. Mr. Chairman. I call for a division of the question.

Mr. GRAY. Mr. Chairman. It seems there can be no difficulty about suspending the rules.

The PRESIDENT. The question is on the motion to suspend the rules in order to consider this resolution.

The "ayes" and "nays" were demanded. The result was announced —"Ayes," 25, "nays," 22—as follows:

AYES.

Abbott,
Campbell
Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Ley,
Lyon.
McCann,
Manderson,
Myers,
Newsom,
Parchin,
Reynolds,
Scofield,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Woolworth.—25.

NAYS.

Ballard,
Boyd,
Cassell,
Estabrook,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Majors,
Mason,
Maxwell,
Moore,
Neligh,
Philpott,
Price,
Shaff,
Sprague,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson.—22.

ABSENT OR NOT VOTING.

Grenell,
Parker,
Robinson,
Tisdel,
Mr. President.—5.

So the motion to suspend the rules was not agreed to.

The PRESIDENT. The question is on the adoption of the resolution.

Mr. MAXWELL. Mr. President. I understand that the vote just taken disposes of the question for today.

The PRESIDENT. The gentleman's point of order is well taken. The motion to adopt the resolution is not in order.

Mr. WOOLWORTH. Mr. President. I hope the convention will go into the committee of the whole this morning to consider the report of the select committee on State Institutions and Public Buildings.

Mr. NELIGH. Mr. President. I move that when we adjourn at noon, we adjourn until Tuesday next at 2 p. m.

Mr. HINMAN. I hope this motion will not prevail. An adjournment of this kind will do them no good. It appears to me these adjournments are getting too frequent. We are squandering the people's money.

Mr McCANN. Mr. President. I am very anxious to go home as I have business to attend to; but I do think there is the greatest injustice in these adjournments.

The PRESIDENT. The question is on the motion to adjourn from noon today until Tuesday at 2 o'clock p. m.

The motion was not agreed to.

Leave of Absence.

Mr. WAKELEY. Mr. President. I

believe the convention will cheerfully vote a leave of absence to any that have to go home.

Mr. McCANN. Mr. President. It is absolutely necessary for me to go home to day. I will ask leave until Monday noon.

Leave granted nem. con.

Mr. STEVENSON. Mr. President. I ask leave of absence until Tuesday at 2 o'clock.

Leave granted nem. con.

Leave of absence was granted to the following gentlemen until Tuesday at 2 o'clock p. m.:

Messrs. Majors, Thomas, Estabrook, Parchin, Towle, Scofield, Neligh, Kirkpatrick, Newsom and Myers, and to Mr. Speice until Wednesday morning.

Mr. BOYD. Mr. President. I move that when we adjourn tomorrow noon, it will be until Monday at 2 o'clock.

Mr. BALLARD. Mr. President. I do hope that motion will not prevail, but that if we must have an adjournment, it will be until such time as a majority of those who have asked leave of absence shall return.

Mr. ESTABROOK. Mr. President. I think this proposition an injustice to those living at a distance, that those who live within easy range make this adjournment every week, and leave others to suck their fingers. My idea in voting for the original proposition was to enable those who lived at a distance to spend Sunday with their family and get back here by Tuesday. Another thought, is this lost time, is it time spent in vain? I do not know how it is with others, but I think we are submitting this matter to the people now as far as you have gone. You come back here with new and better inspiration. It is not time lost, but, in my opinion, time gained. I am at work in my capacity as a member of the Constitutional convention every hour that I am at home. I am at work in the midst of my constituents, they ask me at every corner, "what are you going to do in regard to municipal bonds?" and every other important proposition suggested here, and the interview indicates their views upon the subject. Thus I become better prepared than before.

Mr. HINMAN. Mr. President. I would like to ask what time I have to confer with my constituents? If I started today noon, by travelling day and night I could get there and spend a part of Sunday, and have to leave Sunday night to arrive here Tuesday noon. My friend from Hall (Mr. Abbott) is in the same predicament. We have got to travel 365 miles to get home and the same in returning.

Mr. ESTABROOK. I move to amend that we adjourn from noon today until Tuesday noon.

Mr. PHILPOTT. I would like to know before I vote, if there will be a quorum left after the gentlemen leave who have been granted leave of absence? If so I shall vote aye.

Leave of Absence.

Messrs. Weaver, Mason, Boyd, and Wilson asked for leave of absence until Tuesday noon.

Leave granted nem. con.

The PRESIDENT. The question is

on adjournment until Tuesday noon.

The "ayes" and "nays" were demanded.

The Secretary called the roll.

Mr. KIRKPATRICK (when his name was called). Mr. President. I ask to be excused from voting.

Leave not granted.

Mr. WOOLWORTH. (when his name was called.) Mr. President. I ask to be excused from voting.

Leave not granted.

The President announced the result: "yeas," 25, "nays," 23,—as follows:

YEAS.

Boyd,
Cassell,
Eaton,
Estabrook,
Gibbs,
Griggs,
Hascall,
Kenaston,
Majors,
Mason,
Myers,
Neligh,
Newsom,
Parchin,
Philpott
Reynolds,
Robinson,
Scofield,
Shaff,
Spiece,
Stevenson,
Thomas,
Towle,
Weaver,
Wilson.—25.

NAYS.

Abbott,
Ballard,
Campbell,
Curtis,
Granger,
Gray,
Hinman,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Manderson,
Maxwell,
Moore,
Price,
Sprague,
Stewart.
Thummel,
Vifquain,
Wakeley,
Woolworth.—23.

ABSENT AND NOT VOTING.

Grenell,
Parker,
Tisdel,
Mr. President.

Leave of Absence.

Mr. STEWART. I would ask leave of absence until next Tuesday week.

Leave granted.

Mr. HINMAN. I would ask leave, in case it should be necessary for me to be absent, until Thursday noon.

Leave granted.

Resolutions Again.

Mr. VIFQUAIN. I have a resolution to offer.

The secretary read the resolution as follows:

Resolved, That the members of this convention, while on leave or without leave of absence, or during the adjournment will not be allowed pay.

Mr. GRIGGS. While I am in favor of the main features of that resolution, I do not think it is fair. There are some who are not able to go home. They are left here to pay their board, and as they cannot go home it is unjust to withhold their pay. I would vote for a resolution that all who are absent or on leave should not receive pay.

Mr. GRAY. I think I can offer an amendment which will satisfy the gentleman from Gage (Mr. Griggs.) I move to amend the resolution by inserting, in its proper place "those who voted for the adjournment."

Mr. STEVENSON. I offer an amendment to the amendment—"that those who voted against adjournment be not allowed to vote on this question."

Adjournment Again.

Mr. TOWLE. I move to adjourn.

The ayes and nays were demanded, and the secretary proceeded to call the roll.

The President announced the result—yeas, 8, nays, 39, as follows:

YEAS.

Abbott,
Estabrook,
Neligh,
Newsom,
Parchin,
Scofield,
Speice,
Towle.—8

NAYS.

Ballard,
Boyd,
Campbell,
Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Mason,
Manderson,
Maxwell,
Moore,
Myers,
Philpott,
Price,
Reynolds,
Robinson,
Shaff,
Sprague,
Stewart,
Thummel,
Thomas
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth.—39.

ABSENT AND NOT VOTING.

Grenell,
Parker,
Stevenson,
Tisdel,

So the motion to adjourn was not agreed to.

Postponement.

Mr. TOWLE. I move that the further consideration of the resolution be postponed until next Tuesday, at two o' clock.

Mr. VIFQUAIN. I move to make it eleven o'clock today. It is now fifteen minutes to that hour.

Mr. WEAVER. I move to indefinitely postpone the resolution.

The PRESIDENT. The motion is to indefinitely postpone.

The ayes and noes were demanded.

The secretary proceeded to call the roll.

The President announced the result: ayes, 19; nays, 29; as follows:

AYES.

Abbott,
Campbell,
Estabrook,
Gibbs,
Granger,
Kenaston,
Mason,
Myers,
Neligh,
Newsom,
Parchin,
Robinson,
Scofield,
Stevenson,
Thummel,
Towle,
Wakeley,
Weaver,
Wilson.—19.

NAYS.

Ballard,
Boyd,
Cassell,
Curtis,
Eaton,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Moore.
Philpott,
Price,
Reynolds,
Shaff,
Sprague,
Spiece,
Stewart,
Thomas,
Vifquain,
Woolworth.—29.

ABSENT AND NOT VOTING.

Grenell,
Parker,
Tisdel.

So the motion to indefinitely postpone was not agreed to.

Mr. SPIECE. I move to adjourn.

Motion to Re-Consider.

Mr. KENASTON. I move to reconsider the vote by which the convention decided when it adjourned today to do so until Tuesday next, at two o'clock.

Mr. SPIECE. I move to adjourn.

Mr. TOWLE. I call for the original amendment.

The PRESIDENT. The motion to adjourn is in order,

Mr. MAXWELL. I think not. The gentleman from Cass (Mr. Kirkpatrick) has the floor.

Mr. BALLARD. I made a motion previously.

The PRESIDENT. The question is upon the adjournment.

The yeas and nays being demanded, the secretary proceeded to call the roll.

The President announced the result—yeas, 23; nays, 25, as follows:

YEAS.

Abbott,
Ballard,
Boyd,
Cassell,
Eaton,
Estabrook,
Gibbs,
Hascall,
Myers,
Neligh,
Newsom,
Parchin,
Reynolds,
Robinson,
Scofield,
Shaff,
Spiece,
Stevenson,
Thomas,
Towle,
Weaver,
Wilson.—23.

NAYS.

Campbell,
Curtis,
Granger,
Gray,
Griggs,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick
Lake,
Ley,
Lyon,
McCann,
Mason,
Manderson,
Maxwell,
Moore,
Philpott,
Price,
Sprague,
Stewart,
Thummel,
Vifquain,
Wakeley,
Woolworth.—25.

ABSENT AND NOT VOTING.

Grenell,
Parker,
Tisdel,
Mr. President.

So the motion to adjourn was not agreed to.

Mr. KENASTON. Mr. President. I move to reconsider the vote for adjournment until Tuesday at 2 o'clock.

Mr. WOOLWORTH. Mr. Chairman. Is not the motion of the gentleman from Saline (Mr. Vifquain) before the house?

The CHAIRMAN. Yes sir, but the motion to re-consider takes precedence, because it can be made but once upon that day. The question is upon the motion to re-consider the vote by which we voted that when we do adjourn today, we adjourn until Tuesday next, at 2 o'clock.

The ayes and nays being demanded the secretary proceeded to call the roll.

The President announced the result—ayes, 24; nays, 25—as follows:

YEAS.

Abbott,
Cassell,
Curtis,
Gray,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Moore,
Price,
Sprague,
Stewart,
Thummel,
Vifquain,
Wakeley,
Wilson,
Woolworth.—24.

NAYS.

Ballard,
Boyd,
Campbell,
Eaton,
Estabrook,
Gibbs,
Granger,
Griggs,
Hascall,
Mason,
Myers,
Neligh,
Newsom,
Parchin,
Philpott,
Reynolds,
Robinson,
Scofield,
Shaff,
Spiece,
Stevenson,
Thomas.—25.

Towle,
Weaver,
Mr. President.—25.

ABSENT AND NOT VOTING.

Grenell,
Parker,
Tisdel.—3.

So the motion to reconsider, was not agreed to.

The PRESIDENT. The question now is upon the postponement of the resolution of the gentleman from Saline (Mr. Vifquain) until Tuesday next at 2 o'clock.

Mr. CASSELL. Mr. Chairman. I rise for explanation. There are several members here who have asked leave of absence—I would ask if they can vote?

The PRESIDENT. (Emphatically) Yes, sir. This question has been decided over and over again in the affirmative—the books are full of it. The motion is upon the postponement of the resolution.

The convention divided, and the motion was agreed to.

Mr. SPRAGUE. Mr. Chairman. I think the members of the convention are all satisfied that we can do no business today, I therefore move that we adjourn.

The ayes and nays being demanded the secretary proceeded to call the roll.

The President announced the result—ayes, 28; nays, 20—as follows:

AYES.

Abbott,
Ballard,
Boyd,
Cassell,
Curtis,
Estabrook,
Gibbs,
Granger,
Griggs,
Hinman,
Kenaston,
Kilburn,
Majors,
Myers,
Neligh,
Newsom,
Parchin,
Reynolds,
Robinson,
Scofield,
Shaff,
Sprague,
Spiece,
Stevenson,
Thomas,
Towle,
Weaver,
Wilson.—28.

NAYS.

Campbell,
Eaton,
Gray,
Hascall,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Mason,
Manderson,
Maxwell,
Moore,
Philpott,
Price,
Stewart,
Thummel,
Vifquain,
Wakeley,
Woolworth.—20.

ABSENT AND NOT VOTING.

Grenell,
Parker,
Tisdel,
Mr. President.

So the convention, (at eleven o'clock and seventeen minutes) adjourned.

TWENTY-SIXTH DAY.

Tuesday, July 25, 1871.

The Convention met at 2 o'clock p. m., and was called to order by the president.

Prayer.

Prayer was offered by the chaplain of the convention, Rev. L. B. Fifield, as follows:

O Lord, our God, with confession of sin and with prayer for pardon, nay we honor thy law, thy goodness and thy great love. May it please Thee to give wisdom to all who are in high places; to all who are builders of state; to all who are makers of law; and give to all people liberty everywhere. Amen.

Leave of Absence.

Mr. LEY. Mr. President. I ask leave of absence for Mr. Philpott and Mr. Robinson until tomorrow morning and for Mr. Price until tomorrow at two o'clock.

Leave granted. NEM. CON.

Mr. WEAVER. Mr. President. I ask leave of absence for Mr. Parchin and Mr. Towle until tomorrow noon.

Leave granted. NEM. CON.

Reading of the Journal.

The journal of the last day was read and approved.

Petitions.

Mr. BALLARD. Mr. President. I have a petition from several citizens of Washington county, which I wish read and referred to committee No. 12 (State, County and Municipal Indebtedness).

The Secretary read the petition as follows:

To the Hon. S. A. Strickland, Pres. of the Constitutional Convention of the state of Nebraska.

We, your petitioners would respectfully request your Honorable body to insert such a clause in the constitution as shall in your judgment prevent the taxing of counties, cities, towns and precincts for the benefit of railroads or other incorporated monopolies.

Signed by Joseph Thompson and fifty-nine others.

Referred to the committee on State, County and Municipal Indebtedness.

Mr. McCANN. Mr. President. I wish to present a petition from the Grand Lodge of the Sons of Temperance of the State and ask that it be referred to the special committee of which Mr. Philpott is chairman.

The Secretary read the petition as follows:

To the Honorable, the President and members of the Constitutional convention of Nebraska.

Gentlemen: — The undersigned, your petitioners would respectfully represent that we are the officers of the Grand Division of the Sons of Temperance of Nebraska, representing as we do hundreds of among the most respectable citizens of the state, and feel confident we reflect the sentiments of the majority of the members of our subordinate divisions when we respectfully, yet earnestly, pray that your honorable body will insert a clause in our constitution so that it will require a majority of the qualified voters in any precinct or ward in this state, before persons are permitted to vend intoxicating liquors to be used as a beverage in such precinct or ward. After mature deliberation we are of the opinion that it would be better to have it referred to the precincts or wards instead of counties. Our prayer being for carrying out a cardinal principle in our form of government, that the majority should rule, we trust it will receive the favorable consideration of your honorable body.

THOMAS GIBSON,
Grand Worthy Patriarch.
JOHN GRAY,
Grand Worthy Associate.
M. T. ANDERSON,
Grand Scribe.
W. N. McCANDLISH,
[SEAL] Grand Treasurer.
JOHN BYERS,
Grand Chaplain.
JOHN SHILL,
Grand Conductor.
JAS. C. MAILER,
Grand Sentinel.

Hall of North Omaha Division No. 5,

Sons of Temperance.

Omaha, July 18, 1871.

At a regular meeting of North Omaha Division No. 5, Sons of Temperance, held the date above mentioned, on motion the above petition of our Grand Officers was unanimously approved.

WILLIAM TURTLE,
Worthy Partriarch.
GERRIT VANDENBURG,
Recording Secretary.

Hall of Union Division No. 1, Sons of Temperance.

Omaha, Neb., July 19, 1871.

This is to certify that at a regular meeting of Union Division No. 1, Sons of Temperance, held July 19, 1871, on motion the above petition of our Grand Officers was unanimously approved.

DAVID ROBINSON,
Worthy Patriarch.
H. W. BELLOWS,
Recording Scribe.

Referred to the special committee on temperance.

Mr. ESTABROOK. Mr. President. I have a petition.

The petition was read by the secretary as follows:

To the Constitutional Convention of Nebraska.

The undersigned citizens of Omaha, Nebraska, respectfully ask that the right of suffrage be conferred upon women upon the same conditions and to the same extent as upon men.

Signed by Mrs. J. W. Pickard and thirteen others.

Mr. ESTABROOK. I move the petition be referred to the committee on rights of Suffrage.

The motion was agreed to.

Mr. ESTABROOK. I have two other petitions.

The Secretary read the petitions as follows:

To the Constitutional Convention.

The undersigned citizens of Omaha, Nebraska, respectfully ask that the rights of suffrage be conferred upon women upon the same conditions and to the same extent as upon men.

Dated June, 1871.

Signed Mrs. H. A. Davis and twenty-one others.

To the Constitutional Convention of Nebraska.

The undersigned citizens of Omaha ha, Nebraska, respectfully ask that the right of suffrage be conferred upon women upon the same conditions, and to the same extent as upon men.

Dated June, 1871.

Signed by Mrs. D. C. Sutpher and 80 others.

Mr. ESTABROOK. Mr. President. I move the reference of the petitions to the Committee on Rights of Suffage.

The motion was agreed to.

Mr. MOORE. Mr. President. I have a petition.

To the Honorable, the State Convention, Lincoln, Nebraska.

We the undersigned citizens of the county of York. believing the people of the respective counties to be the best judges of their own wants respectfully petition your honorable body to leave them free to exercise their own pleasure in voting for or rejecting propositions to grant bonds to railroad companies.

Signed by J. R. Gilmore and 42 others.

Mr. MOORE. I move its reference to the Committee on State, County and Municipal Indebtedness.

The motion was agreed to.

Committee of the Whole.

Mr. MYERS. Mr. President. I move that the convention resolve itself into Committee of the Whole for the purpose of considering the report of the Legislative Committee.

The motion was agreed to, so the

Convention resolved itself into Committee of the Whole, Mr. Scofield in in the chair.

The CHAIRMAN. The Committee now has before it section one of the article entitled Legislative. An amendment has been proposed by the gentleman from Douglas (Mr. Hascall) to strike out the word "county,' in fifth line, and insert "representative district." An amendment has also been offered by the gentleman from Otoe (Mr. Mason) to strike out the words "citizens of each county respectively" in fourth and fifth lines, and insert the words "electors of the state."

Mr. MYERS. Mr. Chairman. I would ask the gentleman from Otoe to withdraw his amendment in order that I may offer an amendment which will reach the whole subject, and be in accordance with the understanding of the committee.

Mr. MASON. Mr. Chairman. With the consent of my second I withdraw the amendment.

Mr. MYERS. Mr. Chairman. I move that the word "representatives" in the second line be stricken out.

The motion was agreed to.

Mr. WOOLWORTH. Mr. Chairman. I move that the word "the" in the first line be stricken out and "a" inserted.

The motion was agreed to.

Mr. WOOLWORTH. Mr. Chairman. I move the adoption of the section as amended.

The motion was agreed to.

The Chairman read the next section as follows:

Sec. 2. The enacting clause of all bills shall be: "Be it enacted by the legislature of the state of Nebraska," and no law shall be enacted except by bill.

No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal.

No bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed plainly and clearly in the title.

Mr. MYERS. Mr. Chairman. I move to strike out in seventh line the words "which may be passed by the legislature" and in eighth line the words "plainly and clearly." The committee have had this matter under consideration, since it has been before the Committee of the Whole, and I make this amendment at the suggestion of the committee. They do not think it advisable to draw the entire bill, as we could not agree upon many of the suggestions presented. I however, am perfectly content to let one of those words remain. I would prefer "clearly." And I modify my amendment to "shall be expressed clearly in the title."

Mr. HASCALL. In the provisions of the New York constitution on the subject, commencing at the seventh line of the article as reported it would be better in my judgment to read this way: "No law shall embrace more than one subject which shall be named in the title; but if the title contain only one subject the law shall be valid as to that, and void as to all other subjects." I think that is a better expression than the one used here; and I therefore move to amend it by inserting the words I have read, in the place of those reported in the bill.

Mr. WOOLWORTH. I would like the word "clearly" myself, but I am not very tenacious about it.

Mr. HASCALL. At the suggestion of the chairman of the committee, and as there is no provision contained in the report that is contained in the latter part of the section, I will add what follows, so that it will read:

"No law shall embrace more than one subject which shall be named in the title; but if the title contain only one subject, the law shall be valid as to that, and void as to all other subjects. No law shall be revised, altered or amended by reference to its title only, but the act revised or the section or sections thereof, as altered or amended, shall be re-enacted and published at length."

Mr. WOOLWORTH. Does the gentleman propose to offer that as a separate section?

Mr. HASCALL. I am not particular. By striking out all that relates to it in the second section and adopting an additional section which governs the case.

Mr. MYERS. That will be satisfactory to me.

The CHAIRMAN. Will the gentleman from Douglas state his motion again?

Mr. HASCALL. That all after the word "no," in the seventh line be stricken out, and the amendment sent up by me be adopted as a separate section.

The amendment was agreed to.

Mr. WAKELEY. Mr. Chairman. I move to add after the word "journal" in the sixth line, the following: "only one bill shall be put upon its passage at the same time."

Mr. MYERS. Mr. Chairman. I would like to know the object of this amendment. I do not know how two bills could be passed at one time, unless they were embraced in the same bill, and then they would still constitute the same bill.

Mr. WAKELEY. Mr. Chairman. I will admit that, without reflection, such an amendment would seem unnecessary. But when the gentleman says he would like to know how two bills could be passed at one time, I answer him as General Estabrook answered some one the other day, I think it was Gen. Manderson, that someone didn't see how the justice of the peace could try a slander suit, but he did try it. Now, sir, it is a fact in legislation, that in some States of this Union, an entire batch of bills have been put on their passage at once. I know, that it has been done. I do not know but it is fair to presume a legislature would never do that. But I merely desire to call attention to it. I have heard of it being done in Wisconsin and also in Illinois.

Mr. MYERS. Mr. Chairman. There is another clause in this bill which requires that "each bill pending in the legislature shall be read on separate days." I am not aware of legislatures passing bills by omnibus loads. I do not see how it can be practiced if the ordinary rules which govern parliamentary bodies are enforced in those bodies. I have not, in all my existence, it may be limited, known of a legislature passing more than one at a time. They have, in some states, a private calendar, where bills are read in the forenoon at length, and in the afternoon simply the title, and the clerk reads the title of each bill, which has been read in the forenoon, and then those bills are passed on their title. I have known of eighty bills passing in a single afternoon; but they were private bills; no public bills could pass on that calendar. It was done to facilitate business. Those private bills were simply enabling acts—remedial acts, and bills of that kind, incident to Pennsylvania. I do not see the necessity of adopting the amendment of my colleague.

Mr. STRICKLAND. I would have to enquire how that could be done. It would be putting two proper questions to a legislative body at the same time. I cannot see what could be done, unless he explains it to me. It might be in different stages. It is unnecessary to say you could not pass a bill one moment and another the next.

Mr. ESTABROOK. I was in hopes to get a little light on the subject from the honorable president, because if I am not mistaken, sir, about the time he used to figure conspicuously in the legislative matters of the state, just that thing he says cannot be done was "did." And I have known it to be done. Here is a pigeon hole full of bills; the clerk hands them up, they are read by their title, and then put on their passage, or whatever stage of progress is in order, and the whole omnibus load put on their passage. That was done in the early days of this territory, and in view of that style of procedure which has come under my own observation, and the fact that it may be done, as it is only a word, to add, as a preventative, it seems to me the amendment ought to prevail.

Mr. STRICKLAND. Mr. President. I have had the honor of being connected with several legislative bodies and never heard of the like in my life in any body where I was sitting, I don't see how it could occur. It is an unheard of thing to me. It seems to me no legislature that ever sat would allow two or three matters to come up at one time to be put through and ground through the hopper like wheat. The books are full of this; that things are often done, in legislative bodies, by common consent. It is true that hundreds of bills are passed by legislatures, in closing up a session, and by congress also, without the ayes and nays being taken, but are passed by common consent—no objection being had. It is done in order to dispatch business. It is necessary that when considering propositions when no one objects, they go through at once. If my two friends on the other side of the house can cite me a single instance where a legislative body has passed two bills at the same time or would dare to pick up two subject matters at the same time, I would like to have them do it. Suppose the legislature were considering two bills; one is for the relief of John Smith, who may have rendered the state some service, and the other is a bill for an appropriation, how could both be put upon their passage at once? I don't know but it is possible for such an anomaly to exist, but I certainly never heard of two bills or two matters being passed upon at the same time by a deliberative body. It would be as great an anomaly as two heads to be growing from the shoulders of my friend from Johnson (Mr. Wilson.)

Mr. LAKE. Mr. Chairman. It seems to me that the section as it now stands, renders the amendment unnecessary. It seems to me it is hardly possible that laws, or bills should meet with the unanimous consent of the whole legislature according to this, the ayes and nays must be called after the reading of the bill. It would hardly be possible for all the members to agree. It would result, necessarily, in a division of the question. I think that the section as it now stands is a sufficient protection against procedure which it is proposed to guard against in this amendment.

Mr. MYERS. Mr. Chairman. I would like to call the attention of the members of the convention to the first part of Sec. 29, it reads as follows: "Each bill and concurrent resolution shall be read at large in three different days in each house." No one can introduce two bills in a legislative body at once.

Mr. ESTABROOK. Mr. Chairman. I can prove that it can be done, and has been done in our Territory. In order to ridicule a proposition which was being passed a Mr. Goodwin introduced a bill in which he was given a charter to establish ferries and bridges at all points along the Elkhorn river where they were not already established, and the bill was passed. So that today Mr. Goodwin and his heirs have a charter to locate ferries or bridges at all points along this stream where they are not already established.

Mr. MAXWELL. Mr. Chairman. It does seem to me that such a state of facts as that referred to by the gentleman from Douglas, (Mr. Estabrook) cannot occur. In this provision the ayes and nays must be called, so that it is impossible to pass two bills at once. In the laws of our Territory, there was no provision of that kind. The ayes and nays were not required unless some member called for them. It seems to me the provision of my friend from Douglas is like adding a fifth wheel to a wagon.

Mr. LAKE. Mr. Chairman. I would like to have my colleague explain to this convention how the difficulty could occur under this section? The section provides that the question upon the passage of a bill shall be had immediately upon its last reading. Now with a constitutional provision of that kind could the senate or house of representatives take up and read another bill? Here is a safeguard which is ample, and it provides that no bill should be passed without the assent of a majority of all the members. I am in favor of throwing the safeguards that are necessary around the action of the legislature, but I am opposed to useless amendments.

Mr. WAKELEY. Mr. Chairman. I do not desire to take up any further time in explaining the object of my amendment. I do certainly admit that under this section it will allow more than one bill to be put upon its passage at one time. I have no sort of concern about what is done with the amendment; but in as much as the gentleman on the floor have stated that such mischief could[not]occur. I will state for myself that I have seen in a state, not having perhaps the legislative rule that we have, a large batch of bills read by their titles and the speaker would rise in his place and holding up the bills and saying "these bills having been severally read by their titles and put upon their passage the question is upon their adoption" and the vote is taken.

Mr. LAKE. Was that in a state where the "ayes" and "nays" shall be taken?

Mr. WAKELEY. No sir, it was not, and I don't see that there would be any difficulty of taking the "ayes" and "nays" in the same way.

Mr. LAKE. I would like to ask the gentleman how he would get over the words in this section "immediately after the reading of the bill."

Mr. WAKELEY. I don't know as it is likely under that to occur; but I think this would be a safe provision to put in and it would do no harm.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Douglas (Mr. Wakeley.

The amendment was not agreed to.

Mr. STRICKLAND. I move the adoption of the section.

The section was adopted.

The Chairman read the next section as follows:

Sec. 3. An enumeration of the inhabitants of the state shall be taken under the direction of the legislature in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter, and the districts shall be altered by the legislature at the first session after the return of every enumeration so that each senatorial district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district.

The members of the house of representatives shall be apportioned among the several counties of the state by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens and Indians not taxed, and shall be chosen by districts.

The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature and apportioned among the several counties according to the number of inhabitants in each.

Mr. MAXWELL. Mr. Chairman. I move to strike out all of the section after the word "thereafter" in the third line, and inserting in lieu thereof the following:

"And at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy."

Mr. GRAY. Mr. Chairman. I have drawn a substitute for the entire section which I will read.

At the first session of the legislature after the adoption of this constitution and every two years thereafter the legislature shall apportion legislative representation by the following rule, to-wit:

As a general rule each organized county shall be a representative district, in which one or more representatives shall be elected.

The maximum number of inhabitants, for a member of the house of representatives shall be ascertained by dividing the whole number of inhabitants in the state by the whole number of members of the house of representatives and the quotient shall be the maximum; each county having one-half or more of the maximum number of inhabitants ascertained as aforesaid, shall have one representative, each county shall have one representative for the maximum number of inhabitants and one representative for an excess of one-half or more of the maximum number.

Those counties having less than one half of the maximum number shall be included in representative districts, to consist of two or more counties of about equal number of inhabitants and of contiguous territory and such districts shall have one representative.

The maximum number of inhabitants for senatorial representation shall be ascertained by dividing the whole number of inhabitants in the state by the whole number of members of the senate and the quotient shall be the maximum for senatorial representation.

Each county having one-half or more of such maximum shall have one senator, each county shall have one senator for such maximum number and one for an excess of one-half or more of such maximum.

Those counties not having one-half of such maximum shall be included in senatorial districts, to consist of two or more counties of about an equal number of inhabitants and of contiguous territory and such district shall have one senator.

There shall be no float districts nor shall counties be included in districts for either representative or senatorial representation of a disproportional number of inhabitants.

When no enumeration of the inhabitants of the state shall have been taken by an actual census within one year and a half previous to any apportionment, as hereinafter provided then the number of inhabitants shall be ascertained by allowing five inhabitants for each vote cast at the last election for members of the house of representatives just preceding the apportionment.

The number of representatives and of senators shall be fixed by the legislature at the time of each apportionment.

I move the adoption of the substitute.

Mr. GRAY. Mr. Chairman. It is proper that I should explain the substitute. One of the leading objects I had in view in drafting it was to find some way to avoid the present and past inconvenience growing out of our peculiar way of making legislative apportionments. For instance, it has been quite common within the last few years in this state, for the legislature in making an apportionment of legislative representatives to create its districts, both representative and senatorial, so that one county with a very large population, almost enough for a representative would be included in a district with a very small county, having perhaps less than one-fourth the number of inhabitants. The result of such an apportionment has been, has shown that the county with the lesser proportion of inhabitants gets no actual representation. It has been quite common to create what has here been known and denominated as float districts. For instance, take the float district which includes Douglas county with three or four smaller counties. Perhaps the excess that entitles Douglas county to a portion of that float district may be less for Douglas than in smaller counties, yet it has the power to take and hold the representative, and by this rule the representative from that float district is in fact a representative of Douglas county, and not of any other of the counties. It is the same with the other districts, if you place a large county with a small one in one district, it enables the larger county to have the representative, and the smaller county gets no representation at all. The trouble is that such representation as we had heretofore is not impartial but very partial, and the benefits, if benefits they be, are given to the stronger counties, while the weaker ones are left without representation. It seems to me that as an act of justice we ought to find some rule by which to make the legislative apportionments in this state, so that those weaker counties would have some kind of representation. Go out to the west of the state where counties on an average have an average of a hundred voters, perhaps less, and all have about an equal number of inhabitants, put them together into a representative district, each county will have an equal voice in that district, and have as near a fair representation as it is possible to give them. I suppose it would be utterly impossible to give an exactly even representation, but we can certainly get nearer to it than we have heretofore. That was the object I had in view in drawing the substitute. The proposition contained in the substitute is to take the whole number of inhabitants in the state, then ascertain the number of representatives for that given time, which will have to be fixed either directly by the constitution or by the legislature. Take that county which has one, two or three thousand, it will have one representative, twice that number two representatives. Take the counties with less than one-half, group them together in a district and give that district one member, and the same rule with reference to senatorial districts. By the arrangement there would be some counties that will have more than one senator, some more than one representative, but so far as I am able to judge, it will not be a very popular theory to undertake to divide the counties. I do not believe there is anybody in my county who would like to have it divided into separate districts. I may say Mr. Chairman, that I have drafted the section somewhat hastily and it may be its verbiage is defective, it may be that the apportionments provided for in the substitute come oftener than is proper or necessary. I am willing it should be changed to suit members, but I want to see every part of the state fairly and justly represented in all legislative bodies hereafter.

Mr. ABBOTT. Mr. Chairman. I move to strike out the entire section. I do not think this committee of the Whole have anything to do with it until after the Committee on Apportionment report and the question of minority representation is decided. It will find its appropriate place in the legislative article when it comes into the hands of the Committee on Revision and Adjustment.

Mr. LAKE. Mr. Chairman. I can say for one I am opposed to the substitute offered by the gentleman from Dodge (Mr. Gray). In the first place I think it is altogether too lengthy, secondly, it is better to leave this matter of the apportionment entirely to the legislature. If we should lay down a rule which should be found to be oppressive, and not to work well, it must be adhered to until there could be an amendment to the constitution. I have no doubt the committee on legislation will adopt a just rule of apportionment, and such a rule as will operate favorably to all portions of the state alike. We may, perhaps, lay down some general rule as is provided in the section as it came from the committee, that the representative and senatorial districts shall be composed of coniguous territory, that counties shall not be divided in the formation of those districts, and that they shall contain, as nearly as possible an equal number of inhabitants. A general rule of that kind, is a sufficient safeguard, in my opinion. That is the same provision, substantially although, perhaps, not so fully as in our old constitution. I think the provision we find in the report of the committee better than the amendment of the gentleman from Cass. I prefer either the one from the hands of the committee or that offered by the gentleman from Cass, to the one which has been offered as a substitute by the gentleman from Dodge (Mr. Gray.) I am opposed to laying down any rule which shall be binding on the legislature in this regard. I do not see that the substitute offered by the gentleman from Dodge obviates one of the difficulties he has spoken of—that is the union of several counties into one district, in what has heretofore been termed a float district. His substitute provides that those which have a fraction less than one-half shall be grouped together in several districts, after they have their apportionment, by giving them the whole number they are entitled to individually, to be grouped together for the purpose of giving a certain number of them a representative.

Mr. GRAY. If you will read carefully the substitute you will see that no such thing is attempted to be done. It is only those counties that have actually less than a maximum that can be included in a district with others.

Mr. LAKE. I may have misunderstood the section, and that is one objection—it is so lengthy. If I misunderstood that provision of the gentleman's amendment, of course I have nothing to say in respect to that. As far as float districts are concerned, judging from the past in this state, they have not worked disadvantageously to those counties having the least number of inhabitants. I think gentlemen who have been members of legislative bodies in this state, not only since we have been a state but during our territorial existence, upon examination, will find, in a majority of cases, that a float has been given one of the outside counties. I recollect that has been the case with respect to Lancaster county. For several years the float which was given to Cass, Cass being the most populous county, conceded the float to some other county. I recollect that Mr. Cadman represented the float district one or more times in the territorial legislature, and, perhaps, in the state legislature; and I recollect, in the majority of instances, that the float has been given to one of the weaker counties. We find that has been the case last winter. So that, judging from the past, the way it has been operated under our former constitution, there is no great hardship in leaving it to the legislature. At any rate, I am in favor of leaving to the legislature the fixing of any rule which shall be satisfactory. No legislature will do wrong to any one of the counties of the state. Now, what is provided in this section which came from the committee. "An enumeration of the inhabitants of the state shall be taken in 1875." That fixes a rule which shall be a basis for the legislature to form these districts upon once in five years, we having an enumeration by the state authorities in 1875 and every ten years thereafter, and in 1880 and thereafter an enumeration by the U. S. authorities. And it goes on further to provide that "the districts shall be so altered by the legislature at the first session after the return of every enumeration that each senatorial district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall, at all times, consist of contiguous territory, and no county shall be divided in the formation of a senate district."

I am not altogether certain but I should prefer that the substance of this section, and, perhaps, of the next clause of the section should be couched in somewhat different language; but that the substance of this section should remain as it is—that all the restraint that shall be put upon the legislature should be that which is contained in this section; that they should make the enumeration once in five years, and that the districts should be of contiguous territory and have the population as nearly equal as possible.

Mr. STEWART. Mr. Chairman—

Mr. ABBOTT. I insist on my motion. I think it has precedence.

Mr. STRICKLAND. I understand the motion to be to strike out this section.

Mr. GRAY. I desire to say that my motion was not only to strike out the section, but to substitute. There is another motion to strike out that can take precedence to my motion. I am willing the question should be divided.

Mr. ABBOTT. Then I move a division of the question.

Mr. STEWART. I was going to say a few words in reply to Judge Lake in regard to float representation. He seems to think it has not worked any hardships in this state. I wish to refer him to one instance why I do not wish this left to the legislature. In my own district the senatorial district is composed of Otoe, Johnson and Pawnee. The population of Otoe is 12,345, leaving an excess of 2,880. This excess is placed to Pawnee and Johnson counties. Pawnee has 4,180 and Johnson 3,426, making a total of 7,606, giving virtually, two senators to a population of 12,000. That is one reason I am opposed to leaving this to the legislature. I shall stand here, if need be, for the next six months, before I will submit to anything being adopted which will permit the legislature to make this unjust apportionment.

Mr. BALLARD. I do not know, sir, that I am altogether in favor of Mr. Gray's substitute, but I certainly am in favor of the spirit and intent of it, as I understand him. I am opposed to the word "float," with all its meaning in reference to senators and representatives. I know, sir, injustice has been done to some people in the state of Nebraska. In the first place I am opposed because my constituency is, in the second place, because of the injustice I know has been done. I wish the bounds of the legislature to be fixed in this constitution as far as districts are concerned. I am willing to go further than Mr. Gray. I am willing to have Washington county divided if it becomes necessary rather than have a float. How has it been? When it was ascertained by the people of Washington county last fall that Washington, Douglas and Dodge, and other counties, had a float, they said, Douglas would get it; they were certain she would get it. We are well satisfied with the gentleman who represents us, but we knew nothing about him then. I say make small representative districts, and let the people come together and elect those whom they want to serve them. In smaller districts, the people are better acquainted with the men who represent them.

The CHAIRMAN. The question is upon the motion to strike out section Three.

The motion agreed to.

Mr. HASCALL. Mr. Chairman. The gentleman from Washington (Mr. Ballard) says he is in favor of small representative districts. Now the substitute offered by the gentlemen from Dodge (Mr. Gray) does not provide for that. I believe, it makes counties, districts, I am in favor of doing away with float districts, but I don't think the substitute accomplishes that end.

Mr. GRAY. Mr. Chairman. This substitute proposes to do away with float representatives. The substistitute does not propose to divide counties. It does propose to make districts out of counties when it can be done. It does not propose to include in one district any two counties where one of these counties is large enough to be entitled to a representative. Take the county of Washington, for instance, it would make a district of itself. It is impossible for the legislature to include Washington county with any other county under this substitute.

Mr STRICKLAND. Mr. Chairman. It is necessary something should be inserted in the place of the section we have just voted to strike out. I apprehend the necessity of empowering the legislature to make these apportionments, will be seen. I have no proposition to offer, but merely call the attention of the members to this point.

Mr MAXWELL. Mr. Chairman. I am in favor of anything which does away with float districts. It might be questioned, however, whether this be the place to provide for the districts. I think it is not. I think some other section should be inserted afterwards, in the constitution, as to the character of the districts. Now, Mr. Chairman, in order to bring the matter before the convention, I move to insert this in the place of section 3.

"The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the Senate and House of Representatives, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy."

Mr. GRAY. Mr. Chairman. I will have to call the gentleman to order. The question before the house is the striking out of this section and the adoption of the substitute offered by myself. The question was divided and the motion put to strike out Section 3. It seems to me nothing more can be done until the balance of the question is put. I insist that the balance of the question should be put.

The CHAIRMAN. The question is upon the adoption of the substitute.

Mr. NEWSOM. Mr. Chairman. The substitute offered by the gentlemen from Dodge (Mr. Gray) is a complicated thing. I don't understand it, nor do I believe any gentleman here understands it, but the gentleman from Dodge. I would like to have it printed, and have it in shape, so that I can understand it. To obviate this difficulty the substitute may be referred to the committee on apportionment. It may then be printed so that members could act upon it advisedly. We are now engrafting upon this constitution a provision to stand.

Mr. ESTABROOK. Mr. Chairman. I move that the subject be referred back to the house, with a recommendation it be referred to the committee on legislative apportionment.

Mr. GRAY. Mr. Chairman. I would like to inquire whether any motion, or debate is in order until this question is voted upon.

The CHAIRMAN. The motion to strike out—

Mr. ESTABROOK. Mr. Chairman. I did not move that the committee rise, but that this substitute be reported to the house with a recommendation it be referred to the committee on legislative apportionment.

Mr. STRICKLAND Mr. Chairman. I regard the question is upon the substitute offered by the gentleman from Dodge (Mr. Gray). I don't think anything else can come up between.

("'Question," "question.")

The CHAIRMAN. The chair so decides.

Mr. STRICKLAND. Mr. Chairman. Before the vote is taken, I ask to be excused from voting.

Mr. GRAY. Mr. Chairman. I would like to say a few words.

"Leave," "leave.")

Of course I can't withstand the judgment of so many gentlemen who don't seem to understand the question. Still I desire to say that the draft is no longer, in my opinion, than was necessary in order to engraft the proposition.

Mr. MYERS. Mr. Chairman. If the substitute of the gentleman from Dodge (Mr. Gray) as now proposed, is voted down, then the amendment of the gentleman from Cass (Mr. Maxwell) is in order.

Mr. WILSON. Mr. Chairman. I ask to be excused from voting.

The CHAIRMAN. The question is upon the adoption of the substitute.

The committee divided, and the substitute was not agreed to.

Mr. McCANN. Mr. Chairman. I now ask the gentleman from Cass (Mr Maxwell) to prefix to the amendment offered by him the following words:

"The legislature shall provide by law for the enumeration of the inhabitants of the state in the year 1872 and in 1875, and every ten year thereafter."

Mr. MAXWELL. Mr. Chairman. With the amendment as suggested by the gentleman from Otoe (Mr. McCann) I now propose a substitute for the third section which has been stricken out.

The Chairman read the substitute as follows:

"The legislature shall provide by law for an enumeration of the inhabitants of the state in the year 1872, and 1875 and every ten years thereafter, and at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and House of Representatives, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy."

Mr. BALLARD. Mr. Chairman. I hope the substitute will not prevail, for it does not fix the float matter but leaves it to the legislature to fix as they please.

Mr. WAKELEY. Mr. Chairman. I think there is some misunderstanding here. I don't think the insertion of this affects the matter of apportionment. It seems to me it is better to insert the section without any reference to that but leave it to the committee on apportionment. I think it will expedite the business of the committee if we adopt this substitute. It only provides the times when an apportionment shall be made by the legislature. The language of the substitute is general and does not tie us to any particular manner of apportionment in the state.

Mr. HASCALL. Mr. Chairman. I move to strike out that portion of the substitute that provides for an enumeration in 1872. The reason I do that is that there is a large expense connected with an enumeration by the state, and this convention has the power to apportion the state until the year 1875. If necessary we can provide that in case any new counties organized have a population entitled to a representative, that one might be elected and sent up to the legislature where he shall have a seat. It would be folly for us to proceed to apportion the state and the next year go on to take an enumeration of the state. We can leave this so the legislature can provide for an enumeration once in five years if the rapid growth of our state will require it.

Mr. McCANN. Mr. Chairman. I would accept that amendment to strike out that part of the substitute providing for an enumeration in 1872, if the gentleman from Cass (Mr. Maxwell) is willing.

Mr. MAXWELL. I accept the amendment.

Mr. MOORE. Mr. Chairman. I have a substitute to offer, if it is in order.

The Chairman read the substitute as follows:

"An enumeration of the inhabitants of the state shall be taken under the direction of the legislature in the year 1872 and 1875 and every ten years thereafter and this enumeration together with the census that may be taken under the direction of congress of the United States, shall serve as a basis of representation in both Houses of the legislature."

Mr. Moore. I move the adoption of the substitute.

Mr. GRAY. Mr. Chairman. It is quite apparent that we are making no progress on this section, therefore I move you that this whole subject matter of legislative apportionment be referred to the appropriate standing committee on legislative apportionment, that is that when the committee rise that it be reported back with the recommendation that it be so referred. I think that is just what a majority of this committee desire. That is all that is proposed by this section—the subject matter of the division of districts, as has been before remarked is to be left to the future consideration of this body and it may be deferred until we get a report of the appropriate committee, the committee which has been charged with the consideration of the subject of representative districts. It seems to me we can go on with this because there is no objection, I take it to the making of an enumeration as indicated here, as also dividing the state into districts anew once in five years.

Mr MYERS. Mr. Chairman. It seems to me that we ought to clothe the legislature with power to make this enumeration separate and distinct from that of the United States and that we ought to make it in the intermediate cycle of time, five years. What is the necessity of an enumeration, what is the object of a state enumeration separate from that of the United States, except to furnish the legislature every five years an opportunity of apportioning the state? The apportionment of the United States is taken for general purposes, to ascertain the number of people, their resources, their advancement in arts, commerce, trade, manufacture and agriculture, but the state enumeration takes no such object in view, simply the number of inhabitants, for the purpose of making an apportionment to constitute your Senate and House of Representatives. The course taken by this committee seems to me to be strange, I think the two are indissolubly connected together, the apportionment with enumeration, and that the apportionment belongs directly to the legislature. I know of no other plan in our system of government than for that apportionment to be made every five or ten years upon the basis of a state enumeration. I am perfectly satisfied to adopt the clause as it exists in the present constitution, but I would like to have the two go together in order to be sustained.

Mr. MAXWELL. Mr. Chairman. It seems to me it would be much better to divide this question. There are parties here who would be willing to vote for 1872, because many of these new counties are almost cut off from representation. I could not vote for the whole article as it is presented by the committee. Now, Mr. Chairman, in regard to the statement of my friend from Douglas (Mr. Myers) that the apportionment and the enumeration ought to go together. I understand the object of taking the enumeration is to form a basis to make the apportionment by. Supposing the number of inhabitants of the state should be 120,000, and it is now over that at this time, and we should agree upon sixty representatives for the House there would be no difficulty in ascertaining the number of people entitled to representation, we can fix upon just principles so that all will fare alike.

Mr. MOORE. Mr. Chairman. It seems to me this is not an appropriate section in which to apportion the state. I think it will come up properly hereafter. I will say something with regard to the census to be taken in 1872. It may strike some that it is an unnecessary expense. Now I avoid all expense that is possible, I know that the men who do the voting in this state have to live by the sweat of their brow, and have to make every dollar they have by hard toil, and I would avoid paying money unnecessary, yet we in the west want to come here fully and properly represented if it is possible to be so, and there is no way to obtain it than by a census to be taken in 1872. The western portions of the state are increasing much faster than the eastern portions. Those counties that only had from twenty to thirty population in 1870 will have some 2,000 in 1875 and we do not wish those counties to go unrepresented all that time. They have instructed members here to get them that representation, and we will do all we can for that purpose, they are willing to pay their proper proportion of the expense. It will not necessarily be very much, we have assessors in our precincts in this state, those assessors have to pass to every farm dwelling in each respective county, and in that way, if they will take the enumeration as they go along, it need not be any great additional expense. Then in 1875 take it again, then we can pass every five years and do the best we can under the circumstances.

Mr. LAKE. Mr. Chairman. It seems to me that the same reasons that obtain now for the census will recur within two years after 1875. If it is necessary in order that all the newcomers into the state be represented, that a new census be taken in 1872, then in 1877 the same thing will have to be repeated I prefer to take the course indicated by my colleagues. This body understands about what the proportion has been of emigration to the state. In making up the districts that are to obtain until 1875 a liberal allowance can be made for this emigration, and the new counties can be given the benefit of all this supposed emigration to their borders. Now, it cannot be said that the necessity will cease at 1875; for there is no member of this body, Mr. Chairman, but what believes that the emigration to the state will be greater from 1875 to 1880 than it has been since the census which was taken by the General Government in 1870. Now, it should be borne in mind that the census of 1870 has been but recently taken, only last year, and has just gone out to the world what the population of the different counties were at the time. We know, from various sources, about what proportion of emigration to each of these new counties has been. Representation has been made by gentlemen upon this floor in reference to it, and from those facts an enumeration will be rendered unnecessary, and need not be taken at the time indicated by the gentleman from York (Mr. Moore). His mode of taking the census would be a novel one indeed. He says it would be done without expense. Now, to take a census which ought to be a basis of representatives and senators should be taken with care. If it is of sufficient importance to be called for at all, it is of sufficient importance to be taken with care; and the persons must be paid for so doing in order to secure that result.. What would it cost? It would cost a good round sum to take a census of this state in such a manner that it would be at all valuable, so that it would be anywhere near as valuable as that taken last year. It would be as well to take the representations of gentlemen from this floor as to refer to any such basis as that proposed by the gentleman, and if there has been so large an increase within one year, or a year and a half, since the census was taken in 1870, as to require a new census in order to form a proper basis for an apportionment of representatives and senators, there will be just as much reason for a new apportionment in 1874, before the election of representatives to the legislature the fall following, or the succeeding session. And this same reason would obtain at each annual election, because our state is growing rapidly; these new counties are filling up constantly, and we must adopt some new basis for taking the census which shall be just and taken oftener than five years. If we come to that conclusion then provide that so long as the constitution shall last, and while it is possible there shall be this increase in population every year, then have the census taken every year. Because no other plan could obtain. The difficulty is that the sparcely settled country will be subject to a more frequent census than gentlemen upon this floor would contemplate or be willing to provide for. Now, five years, I think, is often enough. It is sufficient time when the apportionment is made for all practical purposes. Now, the census being taken in 1870, and I believe an apportionment was had, based upon that census. Now, the probability is that ample justice was done to the new counties in that apportionment. If not, let gentlemen upon this floor point out wherein they have been prejudiced and their rights not respected, and I am sure there will be a sufficient desire upon the part of every member of this body, to rectify that wrong. I desire that all parts of the state should be properly represented, and as nearly as practicable alike. But I do not believe in subjecting the state to an unnecessary burden. In order to reach this desirable end, let us approximate, as nearly as is practicable, all things concerned, taking into account the expense, the rapidly increasing population of the state, and let us do what shall seem to be best, and determine what periods of time shall elapse between each separate census, and when we have determined that let that suffice for the first as well as the second division of the state into districts.

Mr. MANDERSON. Mr. Chairman. I agree with much that has been said by my colleague who has just sat down, and also by the gentleman from York (Mr. Moore). I do not think a state census should be taken oftener than once in ten years, and I think the one taken by the state authorities should alternate with the one taken by the Federal government. Yet, we cannot but recognize the fact that great injustice, by deprivation of representatives will be worked to many new counties that are filling up. For instance, say that in 1875 we take the state census, the legislature which meets afterwards makes an apportionment, there may be one-half dozen counties carved out on our western border, and under this system of emigration by colonies, it may be that some of these newly organized counties may run up beyond what is required for the representative in the lower house, but they are compelled to go on until the census of 1880. How shall we rid ourselves of this injustice? By making a general census more frequent? No. That would not be proper, and would make an expense to the state which should not be required. At an early day, in the sitting of this convention I introduced a resolution here, and I am sorry I am not able to secure a copy of it as presented. The Chairman of the committee (Mr. Towle) has a copy of it but he is absent. It seems to me it meets this difficulty:

"The number of senators shall be ———, and the number of representatives shall be ———, which number may be increased every five years by the legislature, and shall be apportioned according to the Federal or state census last preceding such apportionment, provided, however, that any county may, upon application through its board of county commissioners to the governor of the state procure by him the appointment of a board of three census takers, whose duty it shall be at the expense of the county to take the census of such county, and under oath return the same to the governor, and if it appears that the population of said county is equal to the number required for one member of the lower house of the legislature then such county shall be entitled to one member thereof."

Now I suggested that this meets this difficulty. I do not know that it properly comes here, and therefore I will not propose it as an amendment to this or any portion of the Legislative Article. Because I think the committee on legislation should first suggest and report something in regard to it. This course avoids the necessity of frequent taking of the census. The practical working of this scheme is apparent. A new county is formed or organized, and finds a great amount of its population unrepresented. It would be unfair for it to wait until the next Federal census. But upon application being made through the county commissioners to the governor it shall receive its apportionment after the census takers have made their returns, which shall be done at the expense of the county, and if it is found they are entitled to a representative, a special election is called and a member elected.

Mr. GRAY. I think the motion now is to refer the article back to the committee which reported it.

The CHAIRMAN. I do not so understand it.

Mr GRAY. Do I understand the chair to recognize that motion now?

The CHAIRMAN. Yes. Such a motion was made.

Mr. GRAY. It has been urged here by the gentleman from Cass, and I think one or two others on the floor, that this question about representative districts, about the apportionment can be deferred until some day, and referred to some other part of this article. It seems to me if these gentlemen will reflect for one moment they will see we have no business to refer these to any other article in this constitution. Here is where it belongs. Why divide one subject matter into two sections. There is no propriety in it, there is no necessity for it. The whole subject should be settled in this one section, right here. But gentlemen say they are not prepared for it at present. Was not the substitute I offered voted down solely upon this ground? The fact is if we are not prepared to act upon this, it seems to me the only way we can get along, is to have the whole matter referred. The members of the committee, after they have already learned the theories and notions of the members of this convention, it seems to me that they will address themselves to the subject in hand until they draft something which will be satisfactory to the majority of the members of this convention. I trust therefore that this particular subject matter may be disposed of in that way.

Mr. MYERS. Mr. Chairman. I rise to object to the postponement of this matter by referring it to the committee who have had it in charge, or to the committee on apportionment. I concur with the gentleman who last spoke in the wish to have this matter settled here at once. I know it is the most difficult matter in the whole constitution to settle satisfactorally. No matter what proposition this committee had incorporated in their report, it would have met with opposition. It is a difficult matter for adjustment. Let it be settled here. The gentleman from Douglas (Mr. Manderson) has just made a proposition. Now are we prepared to vote for having the census taken in one county but not in another? While the western counties are increasing so rapidly in population, are the eastern counties to stand still? If the new comers will only come into only one county, it might do, but if they are to come into the entire state, the census must be general.

Mr. HASCALL. Mr. Chairman. The gentleman from Dodge (Mr. Gray) states that this question is not understood. This proposition is the same under which we have been acting in the old constitution, and we ought to understand it . I see no way of getting out of this difficulty or adopting the proposition of my colleague (Mr. Manderson) but I think we ought to adopt a section at this time. The apportionment committee cannot do anything, because this convention has not yet determined upon the number of senators and representatives wanted. After this matter has been attended to by the convention, then the committee can get together and go to work. Whether or not we have float districts does not properly come up now.

The CHAIRMAN. The question is upon the motion that when this committee rises, they report this matter back to the convention with a recommendation that it be referred to the committee whence it came.

The motion was not agreed to.

The CHAIRMAN. The question is upon the substitute offered by the gentleman from York (Mr. Moore), which reads: "The legislature shall provide by law, for the enumeration of the inhabitants of the state, in the years 1872 and in 1875, and every ten year thereafter."

Mr. LAKE. Mr. Chairman. I would like to have the proposed section offered by the gentleman from Cass (Mr. Maxwell) for which this is proposed as a substitute, read.

The Chairman read as follows: "The legislature shall provide by law for an enumeration of the inhabitants of the state in the year 1875, and at the end of every ten years thereafter, and at the first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants, excluding Indians not taxed and officers of the United States army and navy."

Mr. MOORE. Mr. Chairman. I first wish to call attention to one thing. By the substitute, I take it, the legislature may apportion the representatives at any time they may see fit, and also take for a basis the census of the United States or of this state; whereas, by the amendment offered by the gentleman from Cass (Mr. Maxwell) we must do it at the first session after the census is taken. Now for some reason, the legislature may fail to consider this matter at the first session, and if they don't do it at this first session, then the census is lost. I think the amendment of the gentleman from Douglas (Mr. Manderson) is a good thing. I would not wish to have the responsibility of giving the apportionment of those new counties according to my judgement. I might give a guess but I would not like to have the legislature act upon my judgment. I think it would be but a small additional cost to take this enumeration in 1872. It has been done in other states when they have adopted a new constitution and they have started with a clean start. I am not particular about anything. I want something that is good for us all, and nothing that is good for one portion and bad for another.

The CHAIRMAN. The question is on the substitute offered by the gentleman from York (Mr. Moore.)

The substitute was not adopted.

The CHAIRMAN. The question is on the substitute offered by the gentleman from Cass (Mr. Maxwell.)

The substitute was adopted.

The Chairman read the next section, as follows:

Sec. 4. The senators shall be chosen for three years, by the citizens of the several senatorial districts, at the same time, in the same manner, and at the same place where they shall vote for representatves.

Mr. SPRAGUE. Mr. Chairman. I move to strike out the word "three" in the first line and insert the word "two."

Mr. McCANN. Mr. Chairman. If the gentleman from Saunders (Mr. Sprague) will allow me I will read an amendment or modification of this section which was considered in the committee as follows:

"Representatives shall be elected for the term of one year, and senators for the term of two years."

Mr. SPRAGUE. That suits me Mr. Chairman.

Mr. McCANN. Then Mr. Chairman I move that the fourth section be struck out and this be substituted in lieu of it.

Mr. CASSELL. Mr. Chairman. I offer a substitute.

The Chairman read the substitute as follows:

"Senators in the odd districts shall be elected for the term of two years, the senators in the even districts shall be elected at the first election for the term of one year and thereafter once in two years. The representatives from the even districts shall be elected for the term of two years and representatives from the odd districts shall be elected, at the first election for one year and thereafter once in two years."

The CHAIRMAN. The question is on the adoption of the substitute offered by the gentleman from Otoe (Mr. McCann.)

The substitute was adopted.

The CHAIRMAN. The question is on the substitute offered by the gentleman from Lancaster (Mr. Cassell.)

Mr. CASSELL. Mr. Chairman. It is plain that the object of the substitute is to have one-half of the members of each house hold over each time.

Mr. McCANN. Mr. Chairman. So far as the senators are concerned I believe that it is wise to provide that they should hold over, but as to the representatives I think it is better that the people shall have the opportunity of voting for them each year, many of my constituents have so expressed themselves, and by an arrangement of that kind we would have one sixth of the members holding over.

The substitute offered by Mr. Cassell was not agreed to.

Mr. McCANN. I move that section four be adopted as amended.

The section was adopted.

The Chairman read the next section as follows:

Sec. 5. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the districts formed as hereinafter directed, according to the number of inhabitants in each as shown by the United States or state enumeration, and shall never be less than one-fourth nor greater than one-third of the number of representatives.

Mr. MAXWELL. Mr. Chairman. I move to strike out section five. Section three which we have already adopted provides for the same thing.

Mr. MYERS. Mr. Chairman. I move to amend this section so as to read as follows:

"The number of senators shall never be less than one-fourth or greater than one-third of the number of representatives."

Mr. WAKELEY. Mr. Chairman. The first section as originally reported by the committee provided for the number of representatives and senators, but all that part was struck out and so far we have made no provision as to the number. It seems to me that we should now fix that number, for no apportionment can be fixed until we have fixed that number.

Mr. HASCALL. Mr. Chairman. I will say that I believe that the new constitution of the state of Kansas will meet the approval of this committee. I have sent to the library for it.

Mr. SPRAGUE. Mr. Chairman. I have a rough draft here which I think will meet the wants of the committee, if in order?

The CHAIRMAN. There is a motion before the committee to strike out this section.

The motion was not agreed to.

Mr. SPRAGUE. Mr. Chairman. I now move to substitute the following to come in after section four:

"And the legislature at its first session after the adoption of this constitution shall apportion the members thereof among the several counties of the state by dividing the whole number of the inhabitants of the state for the ratio of representation for members of the house of representatives and shall give to each county one representative as often as it shall have the number required by the ratio, and for every fraction thereof of one-half or more and every county which shall not have one-half of the required ratio shall be joined with other like counties which will entitle them to at least one representative."

Mr. HASCALL. Mr. Chairman. I have this constitution in my hand. If there is no objection I will read an extract for the benefit of the committee.

"The first house of representatives under this constitution shall consists of seventy-five members who shall be chosen for one year. The first senate shall consist of twenty-five members, who shall be chosen for two years. After the first election, the number of senators and members of the house of representatives shall be regulated by law; but shall never exceed one hundred representatives and thirty-three senators."

I think those ideas may be incorporated in the section just passed.

Mr. WOOLWORTH. Mr. Chairman. I see a difficulty in the plan proposed by the gentleman from Saunders (Mr. Sprague.) He proposes to fix the number of representatives, then he proposes to find out what the ratio of representation should be by dividing the whole number of the population by that number of representatives. So far that goes along all very well but he proposes to give fractions of the ratio in counties not having the full number a representative. There is a practical difficulty in the way we had better look out for. I have heard it suggested here that counties not having the full number ought to be represented, because every county ought to have its representative. There is considerable force in the proposition, I can see a good deal of propriety in that thing, but when you come to say you will apportion your representatives among the whole population, according to a certain ratio, you will necessarily exclude the idea of the representation of counties.

Mr. SPRAGUE. It strikes me the gentleman does not understand the proposition as I presented it. It is true that it is necessary to fix upon some certain ratio to divide the whole population by. It strikes me that there would be no difficulty in finding out what the number would be, the moment you have the census you know whether a county is entitled to a representative or not. I would also include in that provision that the legislature should have the power to increase the number of either house as they see fit.

Mr. WOOLWORTH. I am precisely right. The gentleman says the number of members of the house is to be fixed, say that is ten. Each of those ten men are to represent a hundred people, but if there is a county that has got only a fraction, you use up more than the proper proportion, if you are going to have a certain specific settled number of members of the house.

Mr. SPRAGUE. The number is not fixed.

Mr. WOOLWORTH. I would like to ask the gentleman what the blank is for.

Mr. SPRAGUE. For what number you please.

Mr. McCANN. Mr. Chairman. Allow me to correct the gentleman from Douglas (Mr. Woolworth) by supposing the population of Nebraska to be 125,000, the divisor of that number is what we term our ratio of representation. How do we arrive at that? First we have to decide what shall be the number of members of the senate, second, what shall be the number of members of the house. As soon as we arrive at this number we divide 125,000 by fifty, supposing that is the number of representatives; that gives us 2,00. That would be the ratio.

Mr. WOOLWORTH. You intend that every member of the house shall represent 2.500 people. Now supposing you have in out counties 1,500 people, there every representative will represent 1,500 people instead of 2,500. If you are to give fractions a representative on the plan proposed, are you going to have enough to go round. If you go on the basis that your representative is to represent a whole number, and then go on and let some of your representatives represent a fraction, you are not going to have enough to go round.

Mr. McCANN. Mr. Chairman. I apprehend it will take a better arithmetician than the gentleman from Douglas and Saunders or myself to work this out with mathematical accuracy. We cannot provide a number as a ratio of representation which will work in every instance. We must approximate that number and then say that Otoe county for instance, shall have two senators, that is an approximation. It is not necessary that the number of inhabitants of Otoe county shall be limited at all. When it exceeds one-half I take it the object of the gentleman from Saunders is to give the fraction to another member. We cannot provide in a state growing as rapidly as Nebraska that 2,500 or 3,000 people shall be represented by a single member, sometimes it will be as low as 1,500, and again it will be above 2,500. You cannot provide for it. You must adopt some such principle as is foreshadowed in the gentleman's resolution in order to arrive at it.

Mr. MAXWELL. The principle proposed by the gentleman from Saunders is just. As I understand the basis for the apportionment of the members of the house of representatives, a certain number is fixed upon for the purpose of making the apportionment. For instance, 250, that is for the purpose of making an apportionment. Then you take the whole number of the people in the United States; that gives the apportionment for each member, and is the principle adopted by the house of representatives of the United States. Now you apply this principle to our state and fix upon the number of the members of the house and senate, and supposing there was a moiety, unless a representative was allowed to the fraction, that portion of the people is unrepresented. This is, in substance, the theory of the gentleman from Saunders. I think it would give satisfaction to the state. We may agree upon any number. If it was 60 it would not be far from 2,000. It is very easy to adjust the representatives in this way, and it is only for the purpose of obtaining a number to divide by that you fix the number. It does seem to me that a proviso of this kind, or one similar, would give satisfaction to all parties concerned, and do justice everywhere.

Mr. LAKE. Mr. Chairman. I do not see the difficulty which seems to be apprehended by my colleague (Mr. Woolworth). I suppose the intention is to limit the number of representatives and senators in the constitution, beyond which the legislature in no case can go. Now, the only way in which the ratio can be made up by this plan is to take the whole number of the inhabitants of the state, and, by selecting divisors and using the number of inhabitants as a dividend, and make trials, and ascertain what the quotient shall be, and taking that quotient and add to it the several fractions which may be found in the several counties if they do not exceed the number granted in the constitution, will constitute the number to which any county or district shall be entitled. For instance, we select a divisor, and divide the number of inhabitants. If it is found that the quotient together with these several fractions, exceeds the number the constitution provides for then a larger divisor must be provided, so that the number which is found by that process, together with the fractions found throughout the whole state shall not exceed the number provided in the constitution. I believe the proposition of the gentleman from Saunders is entirely practicable. He merely adopts a plan for arriving at the number which each county shall be entitled to. If we come to the conclusion that every fraction of one-half the ratio of representation shall be given a member, so be it; and so with the senatorial districts. If the fraction of one-half is too small, why name a higher one, In Illinois they provided that no district shall contain any less than four-fifths of the senatorial ratio. Suppose we provide that four-fifths of the ratio shall be entitled to a representative or senator, in every instance, when an apportionment is made, it will be necessary to select your divisor, make a trial of it, count up your units and the number of fractions you have in order to ascertain whether you are giving the constitutional number. And if the division makes a quotient which, together with the fractions which shall be agreed upon, exceeds the constitutional number then, of necessity, the number used as a divisor must be increased to make the number of members less.

Mr. WOOLWORTH. I would like to enquire of my colleague, or of the gentleman from Saunders who proposed this substitute, whether, when this plan is followed, it will indicate the number of the members of the house.

Mr. LAKE. No sir, not at all. It is merely an arbitrary number, used for the purpose of ascertaining the ratio which shall entitle any district to a representative, and in addition to that, any district which contains a fraction in excess of one-half of this number shall be also entitled to a representative.

Mr. WOOLWORTH. I see now.

Mr. LAKE. I see no reason for adopting any idea different from the one offered by the gentleman from Saunders. If the fraction is too small then some gentleman can move to increase it, so that it may be made to meet the approval of this committee.

Mr. ABBOTT. We are now talking on the same question which we voted, a little time ago, to go to the committee. If the gentleman will withdraw this thing I will make a substitute which I think will meet the wishes of the entire house. Until the year 1880 the Senate shall consist of twenty members, and the House of Representatives shall consist of sixty members. After the year 1880 the Legislature may increase the members in each house, but said increase shall not exceed ten senators or thirty representatives.

Mr. HASCALL. I have a proposition I wished to submit to the gentleman. It is this—"The House of Representatives shall consist of 57 members, and the Senate of 19 members, provided, that the number of each may be increased by law after each enumeration of the inhabitants of the State taken under the authority of the State or the United States; but the number of the members of the Senate shall not exceed twenty-five or for the members of the House of Representatives 75.

Mr. ABBOTT. I have an article here which is better, I think, than either one of them. I offer this as a substitute, if the gentleman will accept it. There is no need of debate on this question of apportionment in committee of the whole. We want something each member can look at. I want the question of apportionment fairly discussed in committee, printed, and then laid before the house.

Mr. WOOLWORTH. Mr. Chairman. I think it is very unfortunate we have not some plan before us that has been carefully matured and printed and laid before us so that we can read it, each of us, and understand it. And, in saying that I beg to say I mean no disrespect whatever to the committee which reported the article nor to the gentlemen who have spoken. It seems to me that we are going to meet with difficulties in the consideration of this article. It is true, as stated by my colleague from Douglas, that this matter of apportionment is a difficult and troublesome one; perhaps more so than anything we have had before us; and it is for precisely that reason, as was stated by the gentleman last upon the floor, that we ought to have something before us, that we, each one, can read over and consider. Now, if we had no other business ready for our consideration in the committee of the whole or in the Convention, but this single article, I should think we were constrained to go on with this work as we are now doing; but there is the Judiciary Article ready to be considered in the committee, and the Executive Article to be passed upon by the Convention. And I would, therefore, suggest without, as I have said before, the least reflection upon anybody,—such an idea is the farthest possible from my mind—I would suggest that the committee that has had this matter in charge take this Article back to their room and try to harmonize their own views; try to mature the article that it may be printed again; and we occupy ourselves while the committee is thus engaged in the other business of the committee of the whole. Now I think the house has already seen the great difficulty of understanding these problems thus suddenly brought to our attention by the stumbling I was guilty of myself in considering the proposition of the gentleman from Saunders (Mr. Sprague). I confess that it was hard for me to understand the proposition clearly—as clearly as I would if I had read it over by myself in my room. I hope this article will take some direction that when we come to consider it, we can consider it more fairly than under the present circumstances. After we have considered the article, it has got to be entirely gone through with and rearranged.

Mr. HASCALL. Mr. Chairman. I am on two committees, Schedule and Apportionment. These two committies have been unable to do anything up to this time. The matter you are discussing here, is a matter which should come from the Apportionment Committee, and the reason the committee have not tried to harmonize their ideas upon this, is because you have not said how many Senators and Representatives you want. I coincide with the gentleman from Hall, (Mr. Abbott) that we should consider the number of Senators and Representatives, that we may reach a solution of this difficulty. I will read again my proposition. I hope that the gentleman from Saunders (Mr. Sprague) will withdraw his proposition [so that the one] I submit and that of the gentleman from Hall (Mr. Abbott) may be acted upon. I read my proposition.

The House of Representatives shall consist of fifty-seven members and the Senate of nineteen members; provided that the number of each may be increased by law after each enumeration of the inhabitants of the state to be taken under the authority of the state or of the United States; but the number of the members of the Senate shall not exceed twenty-five nor the members of the House of Representatives seventy-five.

Now I think that this proposition, or that offered by the gentleman from Hall (Mr. Abbott) will settle the matter.

Mr. SPRAGUE. Mr. Chairman. It was not for the purpose of taking from the Committee on Apportionment any of their duties, that I offered this amendment as an independent section. As it seems to be the wish of the members of the committee to have the matter left for their committee to act upon, I withdraw my proposition.

Mr. ABBOTT. Mr. Chairman. I will offer a part of the proposition offered by the gentleman from Douglas (Mr. Hascall) as a substitute, with mine.

Mr. MAXWELL. Mr. Chairman. I move we refer the entire matter to the Committee.

Mr. MYERS. Mr. Chairman. I was going to make the same motion; for the reason that we have now heard something of the views of the house. It is therefore proper now, that the matter should go back to the committee. I move that the Committee rise, and refer this matter back to the committee.

Mr. GRAY. Will the gentleman amend by recommending the committee to take into consideration the amendments and propositions offered here. I desire to know whether the gentleman will include these in his motion.

Mr. HASCALL. Mr. Chairman. I

don't think this committee has yet indicated the number of Senators and Representatives they want. This is a material point, as I remarked before. If this matter is postponed until the last, the committee will move to act hastily, and they cannot do it justice. This is a straight proposition and can be voted upon as well now as at any other time. Of course I appreciate the spirit of my colleague (Mr. Myers). I admire the spirit in which he is willing to take hold of this proposition again, but I see no benefit that can be derived from the reference.

Mr. ABBOTT. Mr. Chairman. I would like to have the proposition I made, read and acted upon.

The Chairman read the proposition, as follows:

"The house of representatives shall consist of sixty members and the senate shall consist of twenty members, provided that the number of each may be increased by law after each census taken by the state or United States, but the number of representatives shall not exceed ninety or the number of senators thirty."

Mr. STRICKLAND. Mr. Chairman. I move that where it reads 20 members we insert 19 and where it reads 60 members, we insert 57.

Mr. THOMAS. Mr. Chairman. Was not a motion made that the committee rise?

The CHAIRMAN. There was; but there were other propositions connected with it and therefore it does not take precedence.

Mr. MYERS. Mr. Chairman. I move that the committee rise and recommend to the convention to recommit the bill.

The motion was agreed to.

Mr. SCOFIELD. Mr. President. I The Committee of the Whole have had under consideration the article reported by the legislative committee, and recommend that it be recommitted to that committee for correction.

Adjournment.

Mr. MAXWELL. Mr. President. I move that we now adjourn.

Mr. HASCALL. Mr. President. I move to amend that we adjourn until 8 o'clock this evening.

Mr. WAKELEY. Mr. President. Upon my motion the report of the committee on electoral and representative reform was made the special order for this evening and each evening this week. There are some members absent who are interested in this report and others who cannot be here this evening, if there is no objection I would suggest that the special order be postponed until tomorrow evening.

Mr. HASCALL. I will withdraw my motion to adjourn until 8 o'clock.

Mr. WILSON. Mr. President. I move we adjourn until tomorrow morning at 9 o'clock.

The motion was agreed to, so the convention (at six o'clock and five minutes) adjourned.